ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket 93–1]

Americans With Disabilities Act Accessibility Guidelines for Building and Facilities; Children's Environments

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On February 3, 1993, the Architectural and Transportation Barriers Compliance Board (Access Board) published an advance notice of proposed rulemaking (ANPRM) in the Federal Register (58 FR 6924) requesting comments from the public on various issues relating to the development of accessibility guidelines for newly constructed and altered children's environments under the Americans with Disabilities Act of 1990. The ANPRM noted that the Center for Accessible Housing at North Carolina State University's School of Design had prepared a report titled "Accessibility Standards for Children's Environments" and that the report was available from the Access Board. Due to an unexpected delay in printing and distributing the report, the Access Board is extending the comment period to accommodate persons who wish to review the report prior to submitting their comments.

DATES: Comments should be received by June 1, 1993. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: John Murdoch, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 (Voice); (202) 272–5449 (TDD). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 93–7587 Filed 3–31–93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–4609–5]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and notice of correction for proposed rule.

SUMMARY: This action announces the date, time and place for a public hearing on the Notice of Proposed Rulemaking (NPRM) entitled "Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline" published on February 26, 1993 (58 FR 11722).

In addition, this action announces a correction to the NPRM. An incorrect version of section VI of the NPRM, originally entitled "Phase II Reformulated Gasoline Performance Standards", was published in error. The correct section VI of the NPRM is now entitled "Phase II (Post-1999) Reformulated Gasoline Standards" and is published here for public comment. The public hearing announced herein will also address the contents of this corrected section VI.

DATES: EPA will conduct a public hearing for both the February 26, 1993 NPRM and today's notice of correction on April 14–15, 1993. The public hearing will begin at 10 a.m. on April 14th and continue until 6 pm and will resume at 8:30 am on April 15th and continue until all testimony has been heard.

The comment period on the February 26, 1993 NPRM, as well as on this notice of correction, will extend through 30 days from the completion of the public hearing. The comment period for the NPRM published on July 9, 1991 (56 FR 31176) and the NPRM published on April 16, 1992 (57 FR 13416) is also extended until such date.

ADDRESSES: The public hearing will be held at the Holiday Inn Dulles International Airport, 1000 Sully Rd., Sterling, VA, 20166, Telephone number: (703) 471–7411. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–12, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–92–12, First Floor, Waterside Mall, rm. M–1500, 401 M Street, SW., Washington, DC 20460. Materials relevant to this notice, including the regulatory language, are contained in that Public Docket. The docket may be inspected from 8:00 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joann Jackson Stephens, Fuel Studies and Standards Branch, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4276.

SUPPLEMENTARY INFORMATION: For further information on this matter, please refer to EPA's February 26, 1993 Federal Register Notice of Proposed Rulemaking at 58 FR 11722.

NPRM Section VI: The following discussion replaces section VI of the February 26, 1993 NPRM published at 58 FR 11722.

V Phase II (Post-1999) Reformulated Gasoline Standards

A. Statutory Requirements

Section 211(k)(1) of the Act specifies that the Administrator shall consider, in addition to cost, non-air quality and other air quality-related health and environmental impacts, and energy requirements in establishing requirements for the greatest achievable reductions in VOC and toxic emissions. Summaries of the cost, health, environmental, and energy impacts of achieving the proposed emissions reductions are presented below and are more thoroughly discussed in the Draft RIA associated with this proposal.

Section 211(k)(3)(B) of the Clean Air Act requires, in the year 2000 and beyond, that aggregate emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from baseline vehicles using reformulated gasoline be at least 25 percent below emissions from baseline vehicles using baseline gasoline during the high ozone season. The Act also specifies that the 25 percent reduction level may be adjusted to provide for a greater or lesser reduction based on technological feasibility, including consideration of the cost of achieving the reductions. However, in no case can the required reductions be less than 20 percent. The required emission reductions are called, hereafter, the Phase II standards.

The Act requires that the minimum standard for emission reductions be set by the more stringent of either the formula fuel specified in section 211(k)(3)(A) or the performance requirement specified in section 211(k)(3)(B). For Phase I reformulated gasoline, the performance requirement of 15 percent is more stringent than the formula fuel emission reductions for both VOC and toxics. Since the performance requirement for Phase II reformulated gasoline is 25 percent, it is also more stringent than the formula fuel. As previously discussed, this sets the minimum standards allowed under section 211(k).

The Phase II requirements would apply to gasoline which is sold in those ozone nonattainment areas required to receive reformulated gasoline and in those areas which have already opted into the program or which opt in at a later date. Requirements related to the enforcement of the Phase II standards (and all reformulated gasoline certification) would not change relative to that with the Phase I standards for 1997 and beyond.

In discussions relating to potential opt-in, a question has been raised concerning a state opting into Phase I of the reformulated gasoline program, but not Phase II, such that a state would continue to have Phase I reformulated gasoline sold in its relevant ozone nonattainment areas under a Federal program beyond 1999. EPA has not, at this time, sufficiently analyzed the details of such an option to evaluate how such fuel would comply with the requirements of section 211(k), particularly those pertaining to the Phase II standards in section 211(k)(3)(B). EPA requests comments on ways such an approach could be designed to fully comply with these requirements, how it would affect fuel distribution and production costs and the value of this added flexibility to states trying to develop means to comply with the ozone NAAQS.

In addition to the VOC and toxic emissions reductions, section 211(k)(2)(A) of the Act specifies that there be no net increase in NO_x emissions (over baseline NO_x levels) resulting from the use of reformulated gasoline. As will be shown below, NO_x emission increases due to the use of reformulated gasoline are unlikely, and are definitely avoidable. Recently, both a National Research Council study [1] and a study prepared for EPA [2] have indicated that additional NO_x reductions could significantly reduce ozone formation in some areas. Based on these reports, other EPA work in ambient ozone analysis and the broad authority granted EPA under section 211(c), EPA is considering adoption of a NO_x emission reduction standard between 0 and approximately 15 percent in connection with the Phase II standards to further reduce ozone formation during the high ozone season. Section 211(c) of the Act gives the Agency broad regulatory authority to regulate motor vehicle fuel quality if any emission product of such fuel causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA must evaluate the effects of the emissions on public health, scientific data, and other factors including technological feasibility when considering using its 211(c) authority.

The Agency believes that NO_x emission control via reformulated gasoline may be a technologically feasible and cost-effective option. The Agency also realizes that imposing a NO_x reduction standard on reformulated gasoline may reduce the flexibility of refiners to modify their operations to produce complying gasoline. This reduced flexibility would likely increase production costs. EPA requests comments on the need for NO_x emissions control in reformulated gasoline areas and on the use of its authority under section 211(c) to add NO_x control to the reformulated gasoline program.

B. Evaluation of Factors Affecting Selection of Proposed Standards

In setting the Phase II reformulated gasoline standards, EPA must consider the cost, health, environmental and energy impacts, and the technological feasibility, of modifying fuels to meet certain emission reduction requirements. EPA's analyses of each of these factors is discussed briefly below, and in detail in the DRIA. Comments on any of the analyses are welcome.

1. Cost Impacts

In evaluating the cost impact of meeting a Phase II emission reduction requirement, EPA considered the cost effectiveness of modifying a fuel to achieve a certain emission reduction. The methodology for determining the cost effectiveness of fuel component changes is described in the Draft Regulatory Impact Analysis (RIA). In this analysis, the incremental cost effectiveness of an emission control obtained through fuel modifications is the ratio of the cost of a fuel component change to the additional reduction in emissions that occurs because of that fuel change. Individual fuel component control costs include operating costs and annualized capital costs.

Individual fuel component control costs and the effects of changes in one fuel component on the other fuel components are integral parts in the determination of the cost effectiveness of an emission control strategy. In the analysis presented in the DRIA, these two integral parts were estimated from the results of refinery modeling performed by Turner, Mason and Company (for the Auto-Oil Air Quality Improvement Research Program) and Bonner & Moore Management Science (for EPA) and on survey results presented by the California Air Resources Board (CARB). Comments on the use of these studies for estimating individual fuel component control costs and coincident fuel component effects are requested. Additional fuel component control cost data is also welcome.

EPA believes it is reasonable to focus this analysis for the proposed Phase II standards on cost effectiveness, which EPA defines here as the ratio of the incremental cost of a control measure to the incremental benefit, e.g., tons of VOC or NO_x emissions reduced or number of cancer incidences avoided. EPA's cost effectiveness analysis measured the incremental cost and incremental benefit from the Phase I emissions performance standards. The use of cost effectiveness allows for the relative ranking of various control strategies so that a specified environmental goal can be achieved at minimum cost. EPA also evaluated the overall cost of the proposed standards on a per-gallon basis to ensure they would be reasonable. EPA does not expect non-production related costs, such as distribution costs, to increase relative to Phase I reformulated gasoline.

All emission reductions for Class C areas are calculated relative to the statutory baseline per the requirements of the Act and all emission reductions for Class B areas are calculated relative to a fuel with an RVP of 7.8 psi and statutory baseline levels for all other parameters. As for Phase I reformulated gasoline, all Phase II reformulated gasoline must have at least 2.0 weight percent oxygen and maximum 1.0 volume percent benzene, with

[1] "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Research Council, December 18, 1991.

[2] "Modeling the Effects of Reformulated Gasolines on Ozone and Toxics Concentrations in the Baltimore and Houston Areas," prepared for EPA, OPPE, APB by Systems Applications International, September 30, 1992.

provisions for averaging. The costs of these two requirements are discussed in the Phase I reformulated gasoline DRIA.[3] The DRIA for Phase II reformulated gasoline contains updated costs for each of these two mandated controls. The cost effectiveness of incremental changes in fuel quality is determined relative to the statutory baseline and the mandated oxygen and benzene requirements. EPA requests comments on the methodology used in determining the cost effectiveness of fuel component changes.

2. Health and Environmental Effects

The health and environmental benefits of the reformulated gasoline program are measured in terms of cancer incidences avoided and tons of VOC and NO_X reduced. Based on the standards proposed today, and supported by the analysis in the DRIA, approximately 2–3 cancer incidences will be avoided annually nationwide, 81,000 to 228,000 annual tons of VOC will be reduced in Class B, and 142,000 to 187,000 annual tons of VOC will be reduced in C areas. The actual number of tons reduced depends on the performance standard (from the range of standards proposed today) ultimately promulgated. If NO_X standards are imposed, 27,000 to 48,000 annual tons of NO_X will be reduced in Class B areas and 40,000 to 71,000 annual tons of NO_X will be reduced in C areas. Additional VOC reductions could also occur with imposition of a NO_X standard.

3. Energy Impacts

Approximately a 3–5 percent increase in energy required to produce reformulated gasoline (over conventional gasoline) is expected, primarily as process heat input. The total increase depends on many factors, including how the energy balance is drawn, refinery configuration, the sulfur level of the crude charge, the oxygenate source, and the reformulation approach chosen by a refiner.

Directional changes in energy usage are predictable. For instance, refinery crude charge will decrease due to extensive use of oxygenates. Oxygenate production is energy intensive, not only in producing the oxygenates, but in the case of MTBE, producing the methanol and isobutylene feedstocks. Desulfurization processes are also energy intensive, particularly hydrogen production. Benzene removal via fractionation and benzene and olefin reduction via hydrogenation require additional energy. Aromatics reductions will reduce energy usage, because the reformer can be run at a lower severity, reducing fuel consumption. T90 reductions will require further gasoline processing of heavy ends to maintain gasoline yield.

4. Technological Feasibility

The technological feasibility of producing fuels to meet the proposed standards must be considered in establishing the standards. EPA believes that the refinery modeling results, from which the fuel component control costs were estimated, provide adequate support for believing that the proposed fuel component changes are technologically feasible. The refinery models utilized only well-developed, demonstrated, commercially available technologies, and hence will only produce fuels within the limits of these technologies. In all likelihood, new technologies will be developed between now and the year 2000 which will reduce the costs for certain types of fuel component changes. Thus, EPA believes that the determination of fuel component control costs using the results of such models is reasonable and that the feasibility of producing such emission-reducing fuels is justifiable.

Because the standards proposed today will not take effect until the year 2000, EPA does not believe that lead time issues should present problems to reformulated gasoline producers in achieving the proposed reductions, as all the processes needed to produce complying fuels are already commercially available.

EPA has evaluated both driveability and safety concerns associated with the use of low RVP fuels and found no significant negative impacts. These issues are addressed in the Draft RIA. Comments are requested on potential technological barriers to achieving the proposed VOC, NO_X and toxics emissions reductions.

C. Proposed Standards

1. VOC and NO_X Control

a. *Control Costs.* The total cost (or manufacturing cost) of producing a reformulated gasoline is the sum of the capital recovery cost and the operating cost. In determining the cost of fuel changes for VOC and NO_X control, EPA assumed that, because VOC control is mandated only during the high ozone season, the length of which was described in the NPRM and SNPRM, operating costs of changes made to produce reformulated gasoline would only occur in the summer and not in the winter, in effect, idling any process units built especially for the purpose of meeting the reformulated gasoline program emission requirements. However, capital costs would have to be fully recovered regardless of whether the equipment was used seasonally or not. EPA adjusted the capital costs accordingly, and used the sum of the adjusted capital cost and the original operating cost as the individual fuel component control cost in analyzing the cost-effectiveness of VOC and NO_X controls. As will be discussed under the section on toxics control, in its estimate of the cost effectiveness of toxics control, EPA did not adjust the capital cost portion of the individual fuel component control costs as described above because toxics reductions are required year-round. Complete information on the development of the individual component costs for both Class B and C areas is provided in the Draft RIA.

Table VI–1 gives the individual fuel component control costs and the associated incremental percent reduction in VOC emissions for Class C areas. The incremental costs shown in the table are the costs of making a particular fuel change after making the fuel change immediately above. The previous fuel change may or may not affect the value of the fuel component directly below. For example, the sulfur cost of 0.11–0.18 cents per gallon is the cost of reducing sulfur to 160 ppm from the sulfur level that resulted when olefins were reduced to 5.0 volume percent first. In this particular case, olefin reductions also reduced sulfur levels. The effect of each fuel component modification on other fuel components are discussed in the DRIA. Likewise, the incremental percent reductions shown in the table are the emission reductions due to making a particular fuel change after making the fuel change immediately above. The sum of the incremental reductions is the total reduction when the fuel component changes are made in the order shown. EPA must stress that the order shown is only an example; refiners may achieve the required standards by any combination of fuel component controls resulting in the required emissions performance. Similar information to that shown in Table VI–1 is available in the DRIA for Class B areas and for Class B and C areas for NO_X and toxics emissions. Comments on the incremental costs and emission reductions presented in Table VI–1, or in the DRIA, and on their

[3] "Draft Regulatory Impact Analysis, Reformulated Gasoline and Anti-Dumping Regulations," EPA, OAR, OMS, ECTD, SDSB, July 1991.

derivation are requested, as well as additional fuel component control cost data and supporting description.

TABLE VI.—CLASS C COMPONENT CONTROL COSTS AND VOC EMISSION REDUCTIONS

Component	Control level	Incremental cost (c/gal)	Incremental VOC reduction (percent)
Oxygen	2.0 wt%	[1] 3.39–5.11	10.5
Benzene	1.0 vol%	0.69	0.0
RVP	8.1 psi	0.57	8.5
Olefins	5.0 vol%	0.27	1.9
Sulfur	160 ppm	0.11–0.18	1.0
RVP	7.5 psi	1.49	7.8
Oxygen	2.7 wt%	[1] 1.18–1.78	3.5
Sulfur	50 ppm	2.60–3.32	2.9
Aromatics	20 vol%	0.61–0.97	0.7

[1] Based on MTBE. Includes increased costs due to fuel economy losses.

b. *Cost Effectiveness.* In determining the emission reductions and the associated cost effectiveness of VOC and NO_X standards, EPA employed a convention typically used in estimating the benefit of both mobile and stationary source VOC controls. This convention requires the determination of cost effectiveness on the basis of annual tons of VOC reduced. Thus, even though VOC emission reductions required under section 211(k) are only during the high ozone season, the convention is to calculate the cost of the fuel component control per ton of VOC removed as if the high ozone season emission reductions were obtained over the whole year.

EPA evaluated particular combinations[4] of fuel component controls which reduce VOC (and VOC plus NO_X) emissions at costs of less than $5,000 and less than $10,000 per ton, respectively. EPA believes that these values represent costs in the range of those which will be incurred by many ozone nonattainment areas in achieving attainment. These cost-effectiveness values are higher than any cost-effectiveness values for any existing federal nationwide motor vehicle or motor vehicle fuel controls. As the cost-effectiveness of an emission reduction strategy increases, substantial emission control may be achieved in other ways (e.g., through other regulatory programs) at the same or lower cost-effectiveness. Since many areas are currently formulating their State Implementation Plans (SIP), EPA requests comments on the cost-effectiveness of strategies being considered by states to reduce VOC and/or NO_X emissions, including both mobile and stationary source controls. EPA also requests comments as to the appropriateness of the cost per ton levels of $5,000 and $10,000.

Normally, use of these cost per ton values would determine the depth of RVP controls projected for Class B and C fuels. However, limited RVP control cost data below 7.2 psi prevented the determination of RVP levels which would exceed the cost-effectiveness levels of $5,000 and $10,000 per ton. Instead, EPA based the proposed Phase II standards for Class B areas on an RVP range of 6.5–7.2 psi. For Class C areas, the proposed standards are based on RVPs of 6.5–7.5 psi which result in the same nonexhaust VOC emissions in Class C areas as the range of Class B RVPs do in Class B areas. Comments are requested on the level of RVP control in each class which is reasonable for use in setting the Phase II standards.

Because fuel component control costs increase with increasing participation in the reformulated gasoline program (this effect is discussed in the DRIA), EPA based its analysis on a mid-level of participation which consists of the "nine cities" as well as those areas which have opted into the program as of June 26, 1992. EPA requests comments on whether its standard setting analysis should focus on just the "nine cities", given coverage of these areas is mandatory, not optional, and they represent the nine largest metropolitan areas with the most severe summertime ozone problems, or if it should focus on the cost-effectiveness of a reformulated gasoline program with a certain level of opt-in, to reflect the current extension of the program to several opt-in areas.

c. *VOC and NO_X Standards.* Based on the complex model, the refinery modeling studies and associated analyses described above, EPA has found that the VOC performance standards listed in Row A of Table VI–2 could be met under the various RVP and cost per ton levels evaluated for the Phase II standards.

TABLE VI–2.—PROPOSED STANDARDS FOR PHASE II REFORMULATED GASOLINE

[Percent reduction in emissions]

	Cost effectiveness <$5,000 per ton		Cost effectiveness <$10,000 per ton	
	Class B[1]	Class C	Class B[1]	Class C
A. VOC Standard	20.7–29.6	26.7–32.1	23.2–31.7	29.2–34.7
B. NO_X Standard	8.5–8.5	8.7–8.8	14.6–14.8	14.4–15.4

[4] As stated previously, the combination of fuel components on which the proposed standards are based are just one of many fuel formulations which could be used to achieve the standards. The proposed standards are performance standards which may be met by the refiner's choice of fuel component controls.

TABLE VI–2.—PROPOSED STANDARDS FOR PHASE II REFORMULATED GASOLINE—Continued

[Percent reduction in emissions]

	Cost effectiveness <$5,000 per ton		Cost effectiveness <$10,000 per ton	
	Class B[1]	Class C	Class B[1]	Class C
C. VOC Standard w/NO_X Std	20.7–29.6	26.7–32.1	25.3–33.8	31.3–37.3
D. Toxics Standard From VOC Std	26.0–29.0	29.4–34.3	29.2–31.4	31.8–36.7

[1] Class B standards relative to a base fuel with RVP at 7.8 psi and Clean Air Act base values for all other parameters. Analysis of Class B standards relative to Clean Air Act base fuel (with RVP of 8.7 psi) can be found in the DRIA.

EPA is also proposing a NO_X standard in the range shown in Row B in Table VI–2. The lower end of this range is a year-round zero NO_X increase, as required by section 211(k)(2)(A) of the Act. In addition, under its authority provided by section 211(c)(1)(A) of the Act, the Agency is proposing a NO_X reduction standard to further reduce ozone formation. The range under consideration for the stringency of the NO_X standards (i.e., NO_X emission reduction requirements) is zero up to those shown in Row B of Table VI–2. As for VOC, the NO_X emission controls would apply only during the high ozone season.

EPA estimated that the NO_X reductions shown in Table VI–2 could be achieved at costs ranging from less than $1000 per ton of NO_X to as high as $5,500 per ton of VOC plus NO_X. Comments are requested on the cost-effectiveness levels which should be used in determining an appropriate level of NO_X control, and whether cost-effectiveness should be evaluated on a NO_X basis or on a VOC plus NO_X basis, and, if the latter, on the relative values of VOC and NO_X.

The additional fuel component changes which yielded the proposed NO_X standards also further decreased VOC emissions. While these fuel component changes cost more than the cost-effective targets described above when based solely on VOC control, they cost less than $5,000 and $10,000 per ton, respectively, when based on total tons of VOC plus NO_X. The VOC reductions achievable under these cost effectiveness levels, on a VOC plus NO_X basis when both VOC and NO_X are controlled, are shown in Row C of Table VI–2. Implementing the more stringent, Row C VOC standards would increase the likelihood that the greatest VOC emission reductions achievable were being attained. However, EPA is not certain that it has fully considered all of the costs of refiners attaining both the VOC and NO_X requirement simultaneously and the Row C VOC emission reductions may be achieved in-use even without the more stringent standards. Comments are requested as to whether EPA should promulgate the more stringent VOC standards of Row C if it also implements the NO_X standards of Row B or whether the slightly more relaxed VOC standards shown in Row A should be required.

Regardless of whether the VOC standards are based on those of Rows A or C, the addition of a NO_X performance standard would further restrict refiners' flexibility in producing qualifying fuels. EPA therefore requests comments on an option whereby the VOC performance standards shown in Row A of Table VI–2 should be relaxed even further if a NO_X reduction standard was promulgated, subject to section 211(k) minimum requirements. Such a decision might be appropriate, for example, if NO_X emissions reductions were more important for ozone control than VOC reductions and, therefore, the acceptable cost effectiveness of VOC reductions should be lower than the $5,000 and $10,000 per ton levels considered in Table VI–2. Comments are also requested on granting refiners the option to trade off VOC and NO_X control within fixed limits on either standard and on whether the trade-off should be one-for-one (in percentage reduction terms) or on some other basis.

If EPA set a NO_X standard under section 211(c), states could still petition EPA to revise it for their state's nonattainment areas based on local conditions. This would be similar to the approach taken in the Phase I and II RVP rulemakings.[5] This decision could be made by each state based on detailed air quality analyses of their individual ozone nonattainment problems. A potential problem with this option is that it could require the production of another type of gasoline in one or more grades. Distribution problems and complications already expected with implementation of the reformulated gasoline requirements could increase. Comments are requested regarding benefits or drawbacks to state-specific NO_X performance standards.

2. Toxics Control

a. *Control costs.* As discussed above, in determining the cost of fuel changes for VOC and NO_X control, EPA adjusted the capital cost portion of the individual fuel component control costs to account for the fact that VOC and NO_X control are necessary only during the high ozone season. Toxics emissions, however, must be controlled year-round and thus no adjustment is needed for capital costs already amortized on an annual basis. The individual fuel component costs shown in Table VI–1 for VOC and NO_X control are thus higher than those used in the determination of the cost effectiveness of toxics emissions control.

b. *Toxics standard and cost-effectiveness.* Fuel controls for the sole purpose of reducing toxic emissions do not appear to be cost-effective. Based on the fuel component control costs used in this analysis, EPA estimates that fuel modifications for the control of toxics emissions would cost over $100 million per cancer incidence reduced.

At the same time, the control of fuel components to reduce VOC emissions also results in average reductions of toxics emissions of 17–33 percent, as shown in row D of Table VI–2. However, EPA believes that Congress intended this program to provide fuel producers flexibility to produce a variety of complying fuel reformulations. While these toxics reductions would presumably be free since they would result from VOC and NO_X controls, in this case, they would also in most cases automatically occur with or without a regulatory standard. If it were more economical for a particular refiner to use fuel modifications to meet the VOC and NO_X standards which did not produce this degree of toxics reduction, then that refiner would be faced with controlling toxics explicitly, which appears to not be cost-effective. Thus, while a toxics performance standard greater than the minimum 25 percent level specified in section

[5] 54 FR 11868 (March 22, 1989); 55 FR 23659 (June 11, 1990).

211(k)(3)(B)(ii) of the CAA is feasible, it would not be cost effective and EPA proposes setting the standard at 25 percent. Section 211(k)(3)(B)(ii) of the CAA also permits EPA to reduce the toxics performance standard below 25 percent to as low as 20 percent based on technological feasibility, considering the cost of achieving such reductions in toxic emissions. While EPA does not have information on how refiners will choose to reformulate gasoline, nor on those reformulations which will not automatically achieve the required toxics reductions and thus will require the refiner to do additional reformulation explicitly for toxics control, and therefore does not have specific information on the actual costs involved, the same arguments expressed above for not requiring greater than a 25 percent reduction are equally applicable below 25 percent. Thus, EPA also proposes as a second option that the toxics performance standard be set at the 20 percent minimum level specified by section 211(k)(3)(B)(ii) of the CAA. Comments are requested on this standard and the decision to not require a greater toxics performance standard of the magnitude shown in Row D of Table VI–2.

Dated: March 26, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–7634 Filed 3–31–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 80, and 97

[GEN Docket No. 93–40; FCC 93–119]

Allocation of the 219–220 MHz Band for Use by the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate the 219–220 MHz band to the amateur radio service on a secondary basis for amateur auxiliary station (point-to-point) packet backbone networks and other amateur point-to-point fixed communications. The proposed allocation would alleviate frequency congestion that amateurs are experiencing in certain areas of the country in the 222–225 MHz band and would facilitate establishment of regional and nationwide backbone networks for amateur packet communications. In addition, the Commission solicits comment on various technical and regulatory issues related to this secondary allocation. The intent of this action is to provide spectrum for amateurs to establish a regional and/or nationwide communications backbone to connect local packet nodes and carry a variety of information including messages, computer programs, graphic images and data bases. This network could also be used for emergency preparedness and national defense communications.

DATES: Comments are due on June 15, 1993. Reply comments are due on July 15, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas P. Derenge, (202) 653–7605, or David Siddall, (202) 653–8108, Office of Engineering and Technology, or John Johnston, (202) 632–4964, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) adopted February 26, 1993, and released March 22, 1993. This action will not add to or decrease the public reporting burden. The full text of the Commission document is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Proposed Rule

1. The Notice of Proposed Rule Making responds to a Petition for Rule Making filed by the American Radio Relay League (ARRL) requesting a secondary allocation in the 216–220 MHz band for amateur wideband packet networks and other point-to-point fixed communications. The Commission proposed to allocate the 219–220 MHz portion of that band to the amateur service on a secondary basis for point-to-point fixed operations. The Commission expressed concern that amateur use of the 216–219 MHz portion of that band could result in harmful interference to the primary services on those frequencies, Automated Maritime Telecommunications Systems (AMTS) coast stations (217–218 MHz), and Interactive Video and Data Services (218–219 MHz), and to reception of television channel 13 broadcasts in the adjacent 210–216 MHz band. The Commission believes that amateurs could use the 219–220 MHz segment on a secondary basis without causing interference to other services if their operations are properly engineered and appropriate regulatory safeguards are applied. This spectrum is currently allocated on a primary basis to the maritime mobile service for AMTS ship station channels.

2. The Commission proposed regulations to ensure that the proposed secondary amateur service not interfere with primary operations and other secondary operations in and adjacent to this band. Power limits were proposed as well as notification requirements for amateur stations within 240 km (150 miles) of AMTS coast stations. Comment was sought on these and other proposed requirements. Comment was also sought on whether this service should be limited to digital data communications, any digital communications, or whether any modulation or access method should be permitted as long as it is a point-to-point fixed communication.

3. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

A. Reason for Action

This action is being taken to provide a secondary allocation to the amateur service for amateur auxiliary station (point-to-point) packet backbone networks and other amateur point-to-point fixed communications. The Commission believes this service is in the public interest and that the additional spectrum is needed to accommodate additional amateur packet radio links in certain areas of the country. The proposed rules will protect from interference all primary and existing secondary users in and adjacent to the band that is proposed for allocation.

B. Objective

The objective of this proposal is to provide additional spectrum in which amateurs can establish wideband backbones to connect individual packet systems or use for other point-to-point fixed communications. This allocation will benefit the amateur services generally, including the emergency preparedness component of those services, as evidenced by a Memorandum of Understanding between ARRL and the National Communications System. Provision of this additional spectrum also will foster amateur expirementation with higher data rates and spectrum efficiency.

C. Legal Basis

The proposed action is authorized by sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r). These provisions authorize the Commission to make such rules and regulations as may be necessary to encourage more effective use of radio as is in the public interest.

D. Description, Potential Impact, and Number of Small Entities Affected

This proposal may provide new marketing opportunities for amateur radio equipment manufacturers, some of which may be small businesses. The Commission invites specific comments on this matter by interested parties.

E. Reporting, Record Keeping and Other Compliance Requirements

None.

F. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

G. Significant Alternatives

None.

Procedural Information

4. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

5. The rule making proposals in this NPRM constitute a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).303(r).

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 15, 1993, and reply comments on or before July 15, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments must be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters; general rules and regulations, Radio.

47 CFR Part 80

Radio Stations in the Maritime Services.

47 CFR Part 97

Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7466 Filed 3–31–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930236–3036]

Designated Critical Habitat; Steller Sea Lion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS proposes to designate critical habitat for the Steller (northern) sea lion (*Eumetopias jubatus*) pursuant to the Endangered Species Act (ESA). The proposed critical habitat for designation includes (1) all Steller sea lion rookeries and major haulouts (i.e. >200 Steller sea lions) located within state and Federally managed waters off Alaska, including a zone that extends 3,000 feet (0.9 km) landward and vertical of each rookery and major haulout boundary, and that extends either 3,000 feet (0.9 km) seaward from rookeries and major haulouts in Alaska located east of 144° W. longitude, or 20 – nm seaward from rookeries and major haulout sites west of 144° W. longitude; (2) all Steller sea lion rookeries in state and Federally managed waters off Washington, Oregon and California, including the zone that extends 3,000 feet (0.9 km) vertical and seaward from each rookery; and (3) three aquatic foraging habitats within the core of the Steller sea lion's geographic range, one aquatic zone located exclusively in the Gulf of Alaska (GOA), and two aquatic zones in the Bering Sea/Aleutian Islands area (BSAI). The physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection are discussed in the preamble to this proposed rule. The primary benefit of the designation of critical habitat is that it provides notification to Federal agencies that a listed species is dependent on these areas for its continued existence and that any Federal action that may affect these areas is subject to the consultation requirements of section 7 of the ESA. The direct economic and other impacts resulting from this proposed critical habitat designation are expected to be minimal.

DATES: Comments on the proposed rule must be received on or before June 1, 1993. Requests for a public hearing must be received on or before May 17, 1993.

ADDRESSES: Comments and requests for a public hearing should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802, (907) 586–7235, or Mr. Michael Payne, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Ecological Consideration

Steller sea lions are the largest member of the otariid pinniped family, and rely upon both terrestrial and marine habitats for successful completion of their life cycle. Steller sea lions are polygynous and gregarious; they use traditional terrestrial sites for breeding, pupping, and resting. Females reach sexual maturity between 3 and 6 years of age and may produce young into their early twenties (Calkins and Pitcher 1982). Adult females are monestrous, and most breed annually. Males reach sexual maturity between 3 and 7 years of age; however, Thorsteinson and Lensink (1962) found that 90 percent of males holding territories on rookeries in the western GOA were between 9 and 13 years of age.

Steller sea lions range around the North Pacific Ocean rim from the Kuril Islands and Okhotsk Sea, through the Aleutian Islands and Bering Sea, and south along the North American coast to

California (Loughlin, Rugh and Fiscus 1984). Their centers of abundance and distribution are the GOA and Aleutian Islands (Kenyon and Rice 1961, Calkins and Pitcher 1982). A 1989 range-wide survey indicates that during the summer about 70 percent of the Steller sea lion population resides in Alaska, 15 percent in the Russian Federation (formerly the Soviet Union), 9 percent in British Columbia, 3 percent in Oregon, and 3 percent in California (Loughlin, Perlov and Vladimirov 1992). Although sea lions exhibit fidelity to breeding location, there is insufficient evidence to identify any discrete population subunits within the geographic range.

Counts of Steller sea lions on rookeries and major haulouts during the breeding season indicate that extensive declines have occurred within the Alaskan and the Russian Federation portions of their range over the last 30 years. A series of counts in the GOA and BSAI between the mid-1970s and 1991 indicate a 70-percent decline in the Alaskan portion of the population over this time period (Merrick, Calkins and McAllister 1992). Counts in Southeast Alaska, British Columbia, and Oregon have remained stable over the same period; Steller sea lion numbers in California have declined. Loughlin, Perlov and Vladimirov (1992) estimated the 1989 Steller sea lion world population to be about 116,000 animals, approximately 39–48 percent of the 240,000–300,000 animals estimated 30 years ago by Kenyon and Rice (1961).

The causes of the Steller sea lion population decline are unknown. Potential causative factors include disease, incidental takes in fishing gear, direct mortality (shooting), and natural or human induced (through fishing) changes in the abundance and species composition of the sea lion prey (Merrick, Loughlin and Calkins 1987, Loughlin and Merrick 1989).

Previous Federal Actions

Because of the drastic population decline, NMFS issued an emergency interim rule on April 5, 1990, that listed the Steller sea lion as a threatened species throughout its range, established protective regulations, and requested comments (55 FR 12645). Since the emergency interim rule was only effective for 240 days, an expeditious permanent rulemaking process was undertaken to avoid any lapse in ESA status. Thus, NMFS decided to postpone critical habitat designation and consideration of additional conservation measures, and issued proposed and final rules to list permanently the species that were essentially identical to the emergency rule (55 FR 29793, July 20, 1990 and 55 FR 49204, Nov. 26, 1990).

The final rule listing the Steller sea lion as threatened became effective on December 4, 1990, and incorporated the protective regulations established in the emergency interim rule. Specifically, coincident with the listing, NMFS: (1) Prohibited shooting at or near Steller sea lions; (2) prohibited, with limited exceptions, vessels from entering within 3 nautical miles (nm) (5.5 km) of selected Steller sea lion rookeries and individuals on land from approaching within one-half mile (0.8 km) or within sight of listed Steller sea lion rookeries in the GOA and BSAI; and (3) limited the allowable annual take of Steller sea lions incidental to commercial fisheries to 675 animals in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone west of 141° W. longitude (50 CFR 227.12). These protective regulations were intended to reduce sea lion mortality, restrict opportunities for unintentional and intentional harassment of sea lions, and minimize disturbance and interference with sea lion behavior, especially at pupping and breeding sites.

Since listing, NMFS has implemented additional regulations under the Magnuson Fishery Conservation and Management Act (Magnuson Act) to reduce the possible adverse effects of the GOA and BSAI Federally managed groundfish fisheries on Steller sea lions, their habitat and food resources. Effective January 20, 1992, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries during the BSAI winter pollock roe fishery; and (3) placed spatial and temporal restrictions on the GOA pollock harvest to divert some fishing effort away from sea lion foraging areas and to spread effort over the calendar year. Protective regulations have focused on the geographic area where the sea lion population has experienced the greatest decline.

Recovery Plan

The ESA requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species. Accordingly, NMFS appointed a Steller Sea Lion Recovery Team (hereafter referred to as the Recovery Team) during April 1990. The Recovery Team submitted a draft Recovery Plan to NMFS on February 15, 1991, which NMFS released for public review and comment (56 FR 11204, March 15, 1991). Following review and comment, a final draft of the Steller Sea Lion Recovery Plan was submitted by the Recovery Team to NMFS on October 3, 1991, for NMFS review and approval. The final draft Recovery Plan incorporated, to the maximum extent possible, the comments that were submitted to NMFS during the technical review process. The Plan discusses the natural history and current status of the species, as well as the known and potential human impacts on the species, and recommends management and research actions to aid the species' recovery. The final Recovery Plan was approved by NMFS on December 30, 1992.

In a separate letter to NMFS dated April 11, 1991, the Recovery Team recommended terrestrial and aquatic areas that should be considered as critical habitat for the Steller sea lion. Those recommendations have been included in this proposal.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species."

Areas outside the current range of a species can only be designated if a designation limited to the species' present distribution would be inadequate to ensure the conservation of the species. The term "conservation," as defined in section 3(3) of the ESA means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

The criteria to be considered in critical habitat designation are specified under 50 CFR 424.12. NMFS is required to consider those physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or

shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are, generally, protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

In addition, when considering the designation of critical habitat, NMFS is required to focus on and list the biological or physical features (primary constituent elements) within the designated areas that are essential to the conservation of the species and that may require special management considerations or protection.

Consideration of Economic, Environmental and Other Factors

The economic, environmental, and other impacts of a critical habitat designation were considered and evaluated. NMFS identified present and anticipated activities that may adversely modify the areas being considered for critical habitat, or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to the species' habitat, in many cases the direct economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat only duplicates and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the ESA and associated regulations. "Taking" as defined in the ESA means to harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm to a listed species can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, migrating, or sheltering.

Impacts attributable to listing also include those resulting from the duty of Federal agencies under section 7 to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat, regardless of whether that habitat has been designated as critical.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. A critical habitat designation contributes to species conservation primarily by identifying critically important areas and by describing the features within the areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only direct impact of a critical habitat designation is under the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat also are likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation usually only duplicates the protection provided under the section 7 jeopardy provision. Designation of critical habitat may provide additional benefits to a species in cases where areas outside of the species' current range have been designated. In these cases, it is expected that Federal agencies would consult on additional actions occurring in these areas.

A designation of critical habitat provides a clearer indication to Federal agencies as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area). For example, disposal of waste material in waters adjacent to a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation would also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. This is particularly true in cases where there are alternative areas that would provide for the conservation of the species. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state, and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of proposal and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

In summary, developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features identified. If there are alternative areas that would provide for the conservation of the species, these alternative areas are also identified. Second, the need for special management considerations or protection of the areas or features is evaluated. Finally, the probable economic and other impacts of

designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of designation, the proposed critical habitat is published in the Federal Register for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within 1 year of the proposal. Final critical habitat designations may be revised, using the same process, as new data become available.

A description of the essential habitat, need for special management, impacts of designating as critical habitat, and the proposed action are described in the following sections for the Steller sea lion.

Essential Habitat of the Steller Sea Lion

Available biological information for the listed Steller sea lion can be found in the final Recovery Plan (NMFS 1992). The physical and biological habitat features that support reproduction, foraging, rest, and refuge are essential to the conservation of the Steller sea lion. For the Steller sea lion, essential habitat includes both terrestrial and aquatic areas.

Terrestrial Habitat

Because of their traditional use and the relative ease of observation, terrestrial habitats are better known than aquatic habitats. Steller sea lion rookeries and haulouts are widespread throughout their geographic range, and the locations used change little from year to year. Factors that influence the suitability of a particular area include substrate, exposure to wind and waves, the extent and type of human activities and disturbance in the region, and proximity to prey resources (Mate 1973).

The best known Steller sea lion habitats are the rookeries, where adult animals congregate during the reproductive season for breeding and pupping. Rookeries are defined as those sites where males defend a territory and where pupping and mating occurs. Rookeries typically occur on relatively remote islands, rocks, reefs, and beaches, where access by terrestrial predators is limited. A rookery may extend across low-lying reefs and islands, or may be restricted to a relatively narrow strip of beach by steep cliffs. Rookeries are occupied by breeding animals and some subadults throughout the breeding season, which extends from late May to early July throughout the range. Female sea lions frequently return to pup and breed at the same rookery in successive years (Gentry 1970), and this site may be the same rookery, or approximate rookery (same island) as the female's natal site (Calkins and Pitcher 1982).

Steller sea lion rookeries are found from the central Kuril Islands around the Pacific Rim of the Aleutian Islands to Prince William Sound (Seal Rocks, at the entrance to Prince William Sound, Alaska, is the northernmost rookery) and south along the coast of North America to Ano Nuevo Island, California, the southernmost rookery. Loughlin, Rugh and Fiscus (1984) identified 51 Steller sea lion rookeries; since that time two additional rookeries have been identified in southeastern Alaska (Hazy Islands and White Sisters), bringing the total to 53 (43 of which are within U.S. borders). Historically, the largest rookeries occurred in the central and eastern Aleutian Islands, and the western and central GOA (Kenyon and Rice 1961; Loughlin, Rugh and Fiscus 1984; Loughlin, Perex and Merrick 1987). Because of drastic declines in pup production at the GOA and Aleutian Islands rookeries, the Forrester Island rookery in southeastern Alaska has been the largest annual producer of pups in recent years.

Haulouts are areas used for rest and refuge by all ages and both sexes of sea lions during the non-breeding season and by non-breeding adults and subadults during the breeding season. Sites used as rookeries in the breeding season may also be used as haulouts during other times of the year. Many rocks, reefs, and beaches are used as haulout sites; Steller sea lions are also occasionally observed hauled out on sea ice and manmade structures, such as breakwaters, navigational aids, and floating docks.

The Recovery Team identified 121 major haulout sites. Major haulouts were defined by the Recovery Team as sites where more than 200 animals have been counted. There are many more haulout sites throughout the range that are used by fewer animals or may be used irregularly.

Aquatic Habitat

Although they are most commonly seen and studied while on land, Steller sea lions spend most of their time at sea. The principal, essential at-sea activity presumably is feeding.

Nearshore waters around rookeries and haulouts: For regulatory purposes, the waterward boundary of rookeries and haulouts has been defined as the mean low-water mark. However, biologically, the boundaries are not that simply delineated. Nearshore waters surrounding rookeries and haulouts are an integral component of these habitats. Animals must regularly transit this region as they go to, and return from, feeding trips. As pups mature, they spend an increasing amount of time in waters adjacent to rookeries, where they develop their swimming ability and other aquatic behaviors. Waters surrounding rookeries and haulouts also provide a refuge to which animals may retreat when they are displaced from land by disturbance.

Rafting sites: In addition to rookeries and haulouts, sea lions also use traditional rafting sites. These are locations where the animals rest on the ocean surface in a tightly-packed group (Bigg 1985). Although the reasons for rafting are not fully understood, the widespread use and traditional nature of these sites indicate that they are an essential part of Steller sea lion habitat.

Food resources: Adequate food resources are an essential component of the Steller sea lion's aquatic habitat Steller sea lions are opportunistic carnivores that prey predominantly upon demersal and off-bottom schooling fishes; invertebrates, e.g., squid and octopus, also appear to be regular component of their diet (Pitcher 1981). Prey consumption is expected to vary geographically, seasonally, and over years in response to fluctuations in prey abundance and availability (Pitcher 1981, Hoover 1988).

Data on Steller sea lion prey consumption are fairly limited. Results of limited diet studies conducted in Alaska since 1975 indicate that walleye pollock (*Theragra chalcogramma*) has been the principal prey in all areas over this time period, with Pacific cod (*Gadus macrocephalus*), octopus (*Octopus* sp.), squid (Gonatidae), Pacific herring (*Clupea harengus*), Pacific salmon (*Onchorhynchus* spp.), capelin (*Mallotus villosus*), and flatfishes (Pleuronectidae) also consumed (Pitcher 1981, Calkins and Pitcher 1982, Calkins and Goodwin 1988, Lowry et al. 1989). Few data are available on Steller sea lion prey preferences in Alaska prior to 1975; however, those data available indicate that pollock may have been a less important component of the diet in previous years (Fiscus and Baines 1966, Pitcher 1981). Limited food habit data from California and Oregon show a predominance of rockfish (Scorpaenidae) and hake (*Merluccius productus*) in the diet, with flatfish, squid, octopus, and lamprey (*Lampetra tridentatus*) also eaten.

Foraging habitats: Specific foraging sites, and their constancy over time, have not been well defined. NMFS' ongoing studies in the central GOA and Aleutian Islands using satellite telemetry are providing more detailed

information on feeding areas and diving patterns in Alaskan waters. Findings to date are summarized below: NMFS has deployed 52 satellite-linked time depth recorders on Steller sea lions since 1989. The results of this tagging indicate that waters in the vicinity of rookeries and haulouts are important foraging habitats, particularly for post-parturient females and young animals. These investigations strongly suggest that sea lion foraging strategies and ranges change seasonally, and according to the age and reproductive status of the animal.

Summertime foraging by postpartum females, whose foraging range is probably restricted by the need to return to the rookery to nurse pups, appears to occur mainly in relatively shallow waters within 20 nm of the rookeries. Data from tagged animals without pups and females with pups during the winter indicate that adult sea lions have the ability to forage at locations far removed from their rookeries and haul-out sites, and at great depths. Sea lion pups by their sixth month are also capable of traveling extended distances from land. However, dive depth appears to be more limited, and may restrict foraging success. Few observed dives by juvenile sea lions (younger than 11 months) have exceeded 20 m, whereas adult animal have been observed diving to depths greater than 250 m.

Need for Special Management Considerations or Protection

The following discussion outlines specific essential habitats that may require special management considerations or protection. Under separate rulemakings, NMFS has already determined that certain Steller sea lion habitats require special management considerations or protection, and has limited human activities in these areas. These management actions and the essential habitats they protect are also described below.

Terrestrial Habitats

The Steller sea lion's use of traditional sites, and the link of territorial males, postpartum females, and pups to rookery sites during the breeding season make them particularly vulnerable to intentional harassment. Observed responses to human disturbance vary from no reaction at all to mass stampedes into the water. In some cases, haulout sites have been completely abandoned after repeated disturbances, whereas in other cases sea lions have continued to use sites even after extreme harassment (Hoover 1988). The remote locations of most rookeries and haulouts help to reduce the frequency of harassment, but disturbance of sea lions by air and water craft continues to occur. Steller sea lions are vulnerable to harassment and disruption of essential life functions (e.g., breeding, pup care, and rest) at rookeries and haulouts throughout their range.

Aquatic Habitats

Nearshore waters around rookeries and haulouts: Nearshore waters associated with terrestrial habitats are subject to the same types of disturbance as rookeries and haulouts. NMFS has prohibited vessel entry within 3 nm of all Steller sea lion rookeries west of 150° W. longitude, the area where the greatest population decline has occurred, primarily to protect sea lions using these habitats from intentional and unintentional harassment. The Recovery Team recommended that waters extending 3,000 feet (0.9 km) from rookeries and major haulouts throughout the range of Steller sea lions be considered essential habitat that merits special management consideration.

Rafting sites: Available information is not sufficient to identify any specific rafting sites that are in need of special management consideration. Therefore, rafting sites are not included in this critical habitat designation.

Prey resources and foraging habitats: Reduction in food availability, quantity, and/or quality is considered to be a possible factor in the Steller sea lion population decline (Calkins and Goodwin 1988; Merrick, Loughlin and Calkins 1987; Loughlin and Merrick 1989; Lowry, Frost and Loughlin 1989). Most of the data on proximate causes of the Alaska sea lion decline point to reduced juvenile survival as a significant causative agent. There are also indications that decreased juvenile survival is due to a lack of food post-weaning and during the winter/spring of the first year. Calkins and Goodwin (1988) found that Steller sea lions collected in the GOA in 1985–1986 were significantly smaller (girth, weight, and standard length) than same-aged animals collected in the GOA in the 1970s. Reduced body size at age was interpreted as an indicator of nutritional stress.

Conservation and management of prey resources and foraging areas appears essential to the recovery of the Steller sea lion population. The quality and quantity of these resources may be degraded by human activities, e.g., pollutant discharges, habitat losses associated with human development, and commercial fisheries. Available data indicate that contamination of sea lion food resources by anthropogenic pollutants has not been a significant factor in the Steller sea lion decline. Changes in prey base due to physical habitat alteration also appear insignificant. Local degradation of sea lion food resources may occur near human population centers, along shipping lanes, and near drill sites. Presently, there is insufficient information to identify any specific geographic areas where additional management measures to protect sea lion food resources from contaminant inputs and habitat loss, beyond the existing state and Federal regulations, are necessary.

The relationship between commercial fisheries and the Steller sea lion's ability to obtain adequate food is unclear. The BSAI/GOA geographic region where Steller sea lions have experienced the greatest population decline is also an area where large commercial fisheries have developed. Many of the Steller sea lion's preferred prey species are harvested by commercial fisheries in this region, and food availability to Steller sea lions may be affected by fishing. At present, NMFS believes that the exploitation rates in Federally managed fisheries are unlikely to diminish the overall abundance of fish stocks important to Steller sea lions. However, spatial and temporal regulation of fishery removals in some areas has been determined to be necessary to ensure that local depletion of prey stocks does not occur.

No definitive description of Steller sea lion foraging habitat is possible. However, available data from satellite telemetry studies indicate that nearshore waters proximal to rookeries and haulouts are important foraging zones for females with pups during the breeding season and yearlings in the non-breeding season. Because of concerns that commercial fisheries in these essential sea lion habitats could deplete prey abundance, NMFS amended the BSAI and GOA groundfish Fishery Management Plans. Under the Magnuson Act, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries during the BSAI winter pollock roe fishery to mitigate concentrated fishing effort on the southeastern Bering Sea shelf and in Seguam Pass; and (3) placed spatial and temporal restrictions on the GOA pollock harvest to divert some fishing effort way from sea lion foraging areas and to spread effort over the calendar year. NMFS is also

proposing to expand seasonally the 10 nm no-trawl zone around Ugamak Island in the eastern Aleutians to 20 nm (57 FR 57726; Dec. 7, 1992). The expanded seasonal buffer at Ugamak Island is intended to better encompass Steller sea lion winter habitats and juvenile foraging areas in the eastern Aleutian Islands region during the BSAI winter pollock fishery.

In taking these regulatory actions, NMFS determined that aquatic habitats and prey resources in the vicinity of GOA and BSAI sea lion rookeries, in Seguam Pass, and on the southeastern Bering Sea shelf are essential to Steller sea lions, and are in need of special management considerations and/or protection. These aquatic habitats are proposed for critical habitat designation.

NMFS is also proposing to designate other foraging habitats, e.g., within 20 nm of major haulouts and Shelikof Strait, where additional management restrictions on human activities do not appear to be warranted at this time. Monitoring of fishery harvests and Steller sea lion research in these habitats will continue.

Essential Steller sea lion prey resources and foraging habitats also occur outside of the GOA and BSAI. However, we do not have sufficient information to identify any specific foraging areas to the east of 144° W. longitude that require special management consideration.

Activities That May Affect Essential Habitat

A wide range of activities by several private, state, and Federal activities and agencies may affect the essential habitats of Steller sea lions. Specific human activities that occur within or in the vicinity of the essential sea lion habitat defined above, and that may disrupt the essential life functions that occur there, include, but are not limited to (1) wildlife viewing (primarily south-central and southeastern Alaska, Oregon, and California); (2) boat and airplane traffic (throughout the range of the Steller sea lion); (3) research activities (on permitted sites and during specified times throughout the year); (4) commercial, recreational, and subsistence fisheries for groundfish, herring, salmon, and invertebrates, e.g., crab, shrimp, sea urchins/cucumbers (throughout the range of the Steller sea lion); (5) timber harvest (primarily southeastern and south-central Alaska); (6) hard mineral extraction (primarily southeastern Alaska); (7) oil and gas exploration (primarily Bering Sea and GOA); (8) coastal development, including pollutant discharges (specific sites throughout range); and (9) subsistence harvest (Alaska).

Federal agencies whose actions may affect essential sea lion habitats and will most likely be affected by this critical habitat designation include, but are not necessarily limited to (1) the U.S. Department of the Interior, Bureau of Land Management, Minerals Management Service (MMS), the National Park Service, and the U.S. Fish and Wildlife Service, (2) the U.S. Department of Agriculture, the Forest Service; (3) the U.S. Environmental Protection Agency; (4) the U.S. Coast Guard; (5) the U.S. military, including the Navy and Air Force; (6) and primarily, the U.S. Department of Commerce, NMFS.

Expected Impacts of Designating Critical Habitat

There are no inherent restrictions on human activities in an area designated as critical habitat. A critical habitat designation affects only those actions authorized, funded, or carried out by Federal agencies. Under section 7 of the ESA, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat

In many cases, the primary benefit of the designation of critical habitat is that it provides notification to Federal agencies that a listed species is dependent on a particular area for its continued existence and that any Federal action that may affect that area is subject to the consultation requirements of section 7 of the ESA. Therefore, this designation would require Federal agencies to evaluate their activities with respect to Steller sea lion critical habitat and to consult with NMFS prior to engaging in any action that may affect the critical habitat.

This designation will assist Federal agencies in evaluating the potential environmental impacts of their activities on Steller sea lions or their critical habitat, and in determining when consultation with NMFS would be appropriate. Currently (prior to the proposed critical habitat designation), Federal agencies active within the range of the Steller sea lion are required to consult with NMFS regarding projects and activities they permit, fund, or otherwise carry out that may affect the species pursuant to section 7 of the ESA. A Federally regulated activity may be conducted in an area designated as critical habitat if the authorizing Federal agency determines through the ESA section 7 consultation process that the activity is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of its critical habitat. It is difficult to separate these two concepts. Activities that result in the destruction or adverse modification of critical habitat are also very likely to jeopardize the continued existence of the species, given the definitions specified in 50 CFR 402.02, regardless of any official critical habitat designation or the absence of such a designation. Therefore, in most situations, if not all, such consultations would be required even without this critical habitat designation because an action that is likely to affect the critical habitat would also be expected to affect the species. Additional consultations as a result of this designation are unlikely to be necessary.

NMFS has already reinitiated section 7 consultation on Federal actions that occur within the range of the Steller sea lion, including those that occur within these proposed critical habitat areas. Federal activities for which section 7 consultations have been reinitiated/conducted include: (1) Federally managed fisheries; (2) MMS Outer Continental Shelf lease sales (areas being considered by MMS for oil and gas lease sales during the 1992–1997 period include portions of proposed critical habitat in Shelikof Strait and the Bogoslof Island area); (3) U.S. Forest Service timber harvest and mineral extraction proposals; (4) EPA waste discharge permits; (5) U.S. Army Corps of Engineers section 10/404 permits; and (6) U.S. military activities.

Section 7 consultations on the Federally managed groundfish fisheries of the BSAI and GOA management areas have resulted in changes in the manner in which these fisheries are prosecuted, specifically to protect Steller sea lions and their essential habitats. Economic effects attributable to these regulations were analyzed in the environmental assessments and other regulatory documents produced in support of those decisions.

The designation of the proposed critical habitat will not affect state and local government activity, or private actions that are not dependent on, or limited by, Federal authority, permits, or funds. The designation will help to inform private and state agencies of the importance of these habitat areas to Steller sea lions. Other provisions of the ESA, such as the prohibition on takings, are applicable to state agencies and private parties.

It should be noted that the taking prohibition has been interpreted broadly, and that the destruction of

habitat may be considered a taking, regardless of any official critical habitat designation or the absence of such a designation and regardless of Federal involvement or the lack of such involvement.

It should also be noted that activities conducted outside of designated critical habitat areas may adversely modify or destroy critical habitat or may jeopardize the continued existence of the listed species. Such a result should be anticipated if the activity has a significant impact on an essential feature identified in the critical habitat designation.

Developed areas, such as roads, are not proposed for designation as critical habitat even if physically situated within the boundaries of the proposed critical habitat units, nor are man-made structures (i.e. jetties or piers) although Steller sea lions may use these structures for haulout sites. In cases where the proposed critical habitat boundaries unavoidably contain man-made structures, these areas will be unaffected by critical habitat designation.

NMFS prepared an Environmental Assessment (EA), based on the best available information, that describes the environmental and economic impacts of alternative critical habitat designations. The proposed action identifies and delineates critical habitat for the Steller sea lion.

This action is intended to maintain and/or enhance, rather than to use, a resource. No adverse environmental impacts from the designation of critical habitat are expected. Rather, this action may enhance the long-term productivity of these areas by ensuring that a Federal agency's actions will not result in the adverse modification or destruction of critical habitat for the Steller sea lion.

Proposed Critical Habitat: Essential Features

NMFS proposes to designate the following areas as critical habitat for the Steller sea lion. These areas are considered essential for the health, continued survival, and recovery of the Steller sea lion population, and may require special management consideration and protection.

(1) NMFS proposes to designate all Steller sea lion rookeries and major haulouts within state and Federally managed waters off Alaska as critical habitat for the species (tables 1 and 2 to proposed 50 CFR 226.12). This designation includes a zone that extends 3,000 feet (0.9 km) of 144° W. longitude, or 20 nm seaward from BSAI and GOA Steller sea lion rookeries and major haulouts west seaward from rookeries and major haulouts located in Alaska east landward and vertical of each rookery and major haulout boundary, and a zone that extends either 3,000 feet (0.9 km) of 144° W. longitude.

This geographic region has historically been the center of Steller seal lion abundance, and has experienced the greatest decline. Aquatic areas surrounding major rookeries and haulout sites provide foraging habitats, prey resources, and refuge considered essential to the conservation of Steller sea lions. The proposed critical habitat surrounding each BSAI and GOA rookery and major haulout site includes not only the aquatic areas adjacent to rookeries that are essential to lactating females and juveniles, but also encompasses aquatic zones around major haulouts, which provide foraging and refuge habitat for non-breeding animals year-round and for reproductively active animals during the non-breeding season. These areas are considered critical to the continued existence of the species throughout their range since they are essential for reproduction, rest, and refuge from predators and human-related disturbance.

(2) NMFS proposes to designate all Steller sea lion rookeries within state and Federally managed waters off Washington, Oregon and California, including the zone that extends 3,000 feet (0.9 km) vertical and seaward from each rookery. A 3,000 foot "buffer zone" landward of rookeries in Washington, Oregon and California would not be appropriate, generally, for these sites. These rookeries are, for the most part, small offshore rocks and outcroppings where upland boundaries are not applicable due to the small size of the site. Haulout sites in Washington, Oregon and California have not been proposed as Steller sea lion critical habitat.

Proposed critical habitat designations (1) and (2) are consistent with recommendations of the Recovery Team, except that rookeries and haulouts outside of U.S. waters have not been included (50 CFR 424.12(h)). They are also consistent with the intent of protective measures developed by NMFS at the time the species was listed as threatened (55 FR 49204, Nov. 26, 1990).

(3) NMFS proposes to follow the recommendations of the Recovery Team and designate critical aquatic foraging habitat within the core of the Steller sea lion's geographic range, where the greatest population decline has been observed. The Recovery Team recommended one aquatic zone for critical habitat designation that is located exclusively in the GOA (Shelikof Strait) (figure 1 of proposed 50 CFR 226.12), and two aquatic zones in the BSAI area (Bogoslof Island area and Seguam Pass) (figures 2 and 3 of proposed 50 CFR 226.12). These sites were selected because of their geographic location relative to Steller sea lion abundance centers, their importance as Steller sea lion foraging areas, their present or historical importance as habitat for large concentrations of Steller sea lion prey items that are essential to the species' survival, and because of the need for special consideration of Steller sea lion prey and foraging requirements in the management of the large commercial fisheries that occur in these areas.

The aquatic foraging sites in the BSAI (Seguam and Bogoslof Island area) that were recommended by the Recovery Team for critical habitat designation are included in this proposal with one modification. NMFS is proposing to designate an area on the southeastern Bering Sea shelf that includes Bogoslof Island, but is larger than that recommended by the Recovery Team. This enlarged area better encompasses a diverse oceanographic region with high concentrations of important sea lion food resources, e.g., walleye pollock, eulachon, capelin, and migrating herring, as well as intense commercial fisheries for these prey resources.

Essential Steller sea lion prey resources and foraging habitats occur outside of the GOA and BSAI. However, NMFS does not have sufficient information to identify specific foraging areas to the east of 144° W. longitude that require special management considerations. Therefore, NMFS is not proposing to designate any critical foraging habitats in these areas. Modifications to this critical habitat designation may be necessary in the future as additional information becomes available.

Public Comments Solicited

NMFS is soliciting information, comments, or recommendations on any aspect of this proposed rule from the public, concerned government agencies, the scientific community, industry, private interests, or any other interested party. NMFS will consider all comments received by the date specified (see **DATES**) in reaching a final decision.

References

A list of references is included in the Environmental Assessment (EA) and available upon request (see **ADDRESSES**).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impacts specifically resulting from the designation of critical habitat, above the impacts attributable to listing the species or from other authorities, are expected to be minimal. The General Counsel of the Department of Commerce has certified that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act; therefore, a regulatory flexibility analysis is not required.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally are categorically excluded from the requirements to prepare an EA or Environmental Impact Statement. However, in order more clearly to evaluate the minimal environmental and economic impacts of the proposed critical habitat designation versus the alternative of a no-critical habitat designation, NMFS has prepared an EA. Copies of the EA are available on request (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the proposed designation of critical habitat for Steller sea lions is consistent to the maximum extent practicable with the approved Coastal Zone Management Programs of the states of Alaska, Washington, Oregon, and California. This determination has been submitted for review by the responsible state agencies under section 7 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife.

Dated: March 25, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.12 is added to subpart B to read as follows:

§ 226.12 North Pacific Ocean

Steller Sea Lion *(Eumetopias jubatus)*

All rookeries and major haulouts within the state and Federally managed waters off Alaska, including a zone that extends 3,000 feet (0.9 km) landward and vertical of each rookery and major haulout boundary, where possible, and a zone that extends either 3,000 feet (0.9 km) seaward from the site boundary for rookeries and major haulouts located in state and Federally managed waters of Alaska east of 144° W. longitude, or 20-nm seaward from the site boundary for sites west of 144° W. longitude; all rookeries within the state and Federally managed waters off Washington, Oregon and California, including the zone that extends 3,000 feet (0.9 km) vertical and seaward from each rookery (tables 1 and 2 to part 226).

U.S. waters and food resources in Shelikof Strait, Gulf of Alaska; in the southeastern Bering Sea shelf, and in Seguam Pass, Aleutian Islands (figures 1 through 3 to part 226).

3. Tables 1 and 2 and figures 1 through 3 are added to the part to read as follows:

Major Steller sea lion rookery sites are identified in the following table. Each baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates; or, if only one set of coordinates is listed, the site extends around the entire shoreline of the island at mean lower-low water. Proposed critical habitat includes the area 3,000 feet (915 meters) landward (Alaska sites only) and seaward from the site baseline, and a vertical extension above the land area measured from sea level. For sites identified with an asterisk, the proposed critical habitat includes the area 20 nautical miles (32 kilometers) seaward from the site baseline.

TABLE 1 TO PART 226

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Alaska:				
Western Aleutians:				
Agattu I./Cape Sabak*	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E
/Gillon Point*	52°24.0 N	173°21.5 E		
Attu I.*	52°57.5 N	172°31.5 E	52°54.5 N	172°28.5 E
Buldir I.*	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E
Central Aleutians:				
Adak I.*	51°36.5 N	176°58.5 W	51°38.0 N	176°59.5 W
Agligadak I.*	52°6.25 N	172°54.0 W		
Amchitka I./Column Rock*	51°32.5 N	178°50.0 E		
/East Cape*	51°23.5 N	179°26.0 E	51°22.0 N	179°23.0 E
Ayugadak I.*	51°45.5 N	178°24.5 E		
Gramp Rock*	51°29.0 N	178°20.5 W		
Kasatochi I.*	52°10.5 N	175°29.0 W	52°10.0 N	175°31.5 W
Kiska I./Lief Cove*	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E
/Cape St. Stephen*	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E

TABLE 1 TO PART 226—Continued

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Seguam I./Saddleridge*	52°21.5 N	172°33.5 W	52°21.5 N	172°35.0 W
Semisopochnoi I.*	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E
Tag I.*	51°33.5 N	178°34.5 W		
Ulak I.*	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W
Yunaska I.*	52°41.0 N	170°34.5 W	52°42.0 N	170°38.5 W
Eastern Aleutians:				
Adugak I.*	52°55.0 N	169°10.5 W		
Akun I./Billings Head*	54°18.0 N	165°31.5 W	54°18.0 N	165°34.0 W
Akutan I./Cape Morgan*	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W
Bogoslof I.*	53°56.0 N	168°02.0 W		
Ogchul I.*	53°00.0 N	168°24.0 W		
Sea Lion Rock*	55°28.0 N	163°12.5 W		
Ugamak I.*	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W
Bering Sea:				
Walrus I.*	57°11.0 N	169°56.0 W		
Western Gulf of Alaska:				
Atkins I.*	55°03.5 N	159°18.5 W		
Chernabura I.*	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W
Clubbing Rocks*	54°42.0 N	162°27.5 W	54°43.0 N	162°27.5 W
Pinnacle Rock*	54°46.0 N	161°46.0 W		
Central Gulf of Alaska:				
Chirikof I.*	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W
Chowiet I.*	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W
Marmot I.*	58°14.0 N	151°47.5 W	58°10.0 N	151°51.0 W
Outer I.*	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W
Sugarloaf I.*	58°53.0 N	152°02.0 W		
Eastern Gulf of Alaska:				
Seal Rocks*	60°10.0 N	146°50.0 W		
Southeast Alaska:				
Forrester I	54°51.0 N	133°32.0 W	54°52.5 N	133°35.5 W
Hazy I	55°52.0 N	134°34.0 W	55°51.5 N	134°35.0 W
White Sisters	57°38.0 N	136°15.5 W		
Oregon:				
Rogue Reef/Pyramid Rock	42°26.7 N	124°28.2 W		
Orford Reef:				
Long Brown Rock	42°47.5 N	124°36.3 W		
Seal Rock	42°47.2 N	124°35.6 W		
California:				
Ano Nuevo I	37°06.5 N	122°20.5 W		
Cape Mendocino	40°26.0 N	124°24.0 W		
Farallon Islands:				
Southeast	37°41.5 N	123°00.1 W		
Middle	37°43.7 N	123°02.8 W		
North	37°46.3 N	123°06.4 W		
Sugarloaf I	39°44.5 N	123°50.3 W		

Major Steller sea lion haulout sites are identified in the following table. Each baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates; or, if only one set of coordinates is listed, the site extends around the entire shoreline of the island at mean lower-low water. Proposed critical habitat includes the area 3,000 feet (915 meters) landward and seaward from the site baseline, and a vertical extension above the land area measured from sea level. For sites identified with an asterisk, the proposed critical habitat includes the area 20 nautical miles (32 kilometers) seaward from the site baseline.

TABLE 2 TO PART 226

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Alaska:				
Western Aleutians:				
Alaid I.*	52°45.0 N	173°56.5 E	52°46.5 N	173°51.5 E
Shemya I.*	52°44.0 N	174°09.0 E		
Central Aleutians:				
Amlia I./East*	52°05.0 N	172°58.5 W	52°06.0 N	172°57.0 W
/Sviech. Harbor*	52°02.0 N	173°23.0 W		

TABLE 2 TO PART 226—Continued

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Amukta I. & Rocks*	52°31.5 N	171°16.5 W	52°26.5 N	171°16.5 W
Anagaksik I.*	51°51.0 N	175°53.5 W		
Atka I.*	52°23.5 N	174°17.0 W	52°24.5 N	174°07.5 W
Chaguiak I.*	52°34.0 N	171°10.5 W		
Chuginadak I.*	52°46.5 N	169°44.5 W	52°46.5 N	169°42.0 W
Great Sitkin I.*	52°06.0 N	176°10.5 W	52°07.0 N	176°08.5 W
Kagamil I.*	53°02.5 N	169°41.0 W		
Kanaga I./North Cape*	51°56.5 N	177°09.0 W		
/Ship Rock*	51°47.0 N	177°22.5 W		
Kavalga I.*	51°34.5 N	178°51.5 W	51°34.5 N	178°49.5 W
Kiska I./Sobaka & Vega*	51°50.0 N	177°20.0 E	51°48.5 N	177°20.5 E
Little Sitkin I.*	51°59.5 N	178°30.0 E		
Little Tanaga I.*	51°50.5 N	176°13.0 W	51°49.0 N	176°13.0 W
Sagigik I.*	52°00.5 N	173°08.0 W		
Seguam I./South*	52°10.0 N	172°37.0 W	52°19.5 N	172°18.0 W
/Finch Pt.*	52°23.5 N	172°25.5 W	52°23.5 N	172°24.0 W
Segula I.*	52°00.0 N	178°06.5 E		
Tanadak I./East*	51°57.0 N	177°47.0 E		
/West*	52°04.5 N	172°57.0 W		
Tanaga I.*	51°55.0 N	177°58.5 W	51°55.0 N	177°57.0 W
Ugidak I.*	51°35.0 N	178°30.5 W		
Uliaga I.*	53°04.0 N	169°47.0 W	53°05.0 N	169°46.0 W
Unalga & Dinkum Rocks*	51°34.0 N	179°04.0 W	51°34.5 N	179°03.0 W
Eastern Aleutians:				
Akutan I./Reef-Lava*	54°10.5 N	166°04.5 W	54°07.5 N	166°06.5 W
Amak I.*	55°24.0 N	163°07.0 W	55°26.0 N	163°10.0 W
Cape Sedanka & Island*	51°50.0 N	168°04.0 W		
Emerald I.*	53°17.5 N	167°51.5 W		
Old Man Rocks*	53°52.0 N	166°05.0 W		
Polivnoi Rock*	53°16.0 N	167°58.0 W		
Tanginak I.*	54°12.0 N	164°19.0 W		
Tigaida I.*	54°08.5 N	164°58.5 W		
Umnak I.*	53°15.0 N	168°20.0 W		
Bering Sea:				
Cape Newenham*	58°39.0 N	162°10.5 N		
Round I.*	58°36.0 N	159°58.0 W		
Western Gulf of Alaska				
Bird I.*	54°49.0 N	159°46.0 W		
Castle Rock*	55°17.0 N	159°30.0 W		
Caton I.*	54°23.5 N	162°25.5 W		
Jude I.*	55°16.0 N	161°06.0 W		
Lighthouse Rocks*	55°47.5 N	157°23.0 W		
Nagai I.*	54°52.5 N	160°14.0 W	54°56.0 N	160°15.0 W
Nagai Rocks*	55°50.0 N	155°46.0 W		
Sea Lion Rocks*	55°04.5 N	160°31.0 W		
South Rock*	54°18.0 N	162°43.5 W		
Spitz I.*	55°47.0 N	158°53.0 W		
The Whaleback*	55°16.5 N	160°06.0 W		
Central Gulf of Alaska:				
Cape Barnabas*	57°10.0 N	152°55.0 W	57°07.5 N	152°55.0 W
Cape Chiniak*	57°35.0 N	152°09.0 W	57°37.5 N	152°09.0 W
Cape Gull*	58°13.5 N	154°09.5 W	58°12.5 N	154°10.5 W
Cape Ikolik*	57°17.0 N	154°47.5 W		
Cape Kuliak*	57°48.2 N	153°55.0 W		
Cape Sitkinak*	56°32.0 N	153°52.0 W		
Cape Ugat*	57°57.0 N	153°51.0 W		
Gore Point*	59°12.0 N	150°58.0 W		
Gull Point*	57°21.5 N	152°36.5 W	57°24.5 N	152°39.0 W
Latax Rocks*	58°42.0 N	152°28.5 W	58°40.5 N	152°30.0 W
Nagahut Rocks*	59°06.0 N	151°46.0 W		
Puale Bay*	57°41.0 N	155°23.0 W		
Sea Lion Rocks*	58°21.0 N	151°48.5 W		
Sea Otter I.*	58°31.5 N	152°13.0 W		
Shakun Rock*	58°33.0 N	153°41.5 W		
Sud I.*	58°54.0 N	152°12.5 W		
Sutwik I.*	56°32.0 N	157°14.0 W	56°32.0 N	157°20.0 W
Takli I.*	58°03.0 N	154°27.5 W	58°03.0 N	154°30.0 W
Two-headed I.*	56°54.5 N	153°33.0 W	56°53.5 N	153°35.5 W
Ugak I.*	57°23.0 N	152°15.5 W	57°22.0 N	152°19.0 W
Ushagat I.*	58°53.5 N	152°18.5 W		

TABLE 2 TO PART 226—Continued

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Eastern Gulf of Alaska:				
Cape Fairweather	58°47.5 N	137°54.0 W		
Cape St. Elias*	59°48.0 N	144°36.0 W		
Chiswell I.*	59°36.0 N	149°34.0 W		
Graves Rock	57°14.5 N	136°45.5 W		
Hook Point*	60°20.0 N	146°15.5 W		
Middleton I.*	59°26.5 N	146°20.0 W		
Perry I.*	60°39.5 N	147°56.0 W		
Point Eleanor*	60°35.0 N	147°34.0 W		
Point Elrington*	59°56.0 N	148°13.5 W		
Seal Rocks*	60°10.0 N	146°50.0 W		
The Needle*	60°07.0 N	147°37.0 W		
Wooded I.*	59°52.0 N	147°22.0 W		
Southeast Alaska:				
Benjamin I.	58°33.5 N	134°54.5 W		
Biali Rock	56°43.0 N	135°20.5 W		
Biorka I.	56°51.0 N	135°32.0 W		
Cape Addington	55°26.5 N	133°48.5 W		
Cape Cross	57°55.5 N	136°33.0 W		
Cape Ommaney	56°09.5 N	134°39.5 W		
Coronation I.	55°49.5 N	134°16.5 W		
Gran Point	59°08.2 N	135°14.6 W		
Ledge Point	58°48.5 N	130°45.5 W		
Lull Point	57°18.0 N	134°48.5 W		
Sunset I.	57°30.5 N	133°35.0 W		
Timbered I.	55°42.0 N	133°48.0 W		

Figure 1 to Part 226: Proposed Steller sea lion critical habitat in Shelikof Strait. Locations indicated are major Steller sea lion rookeries.

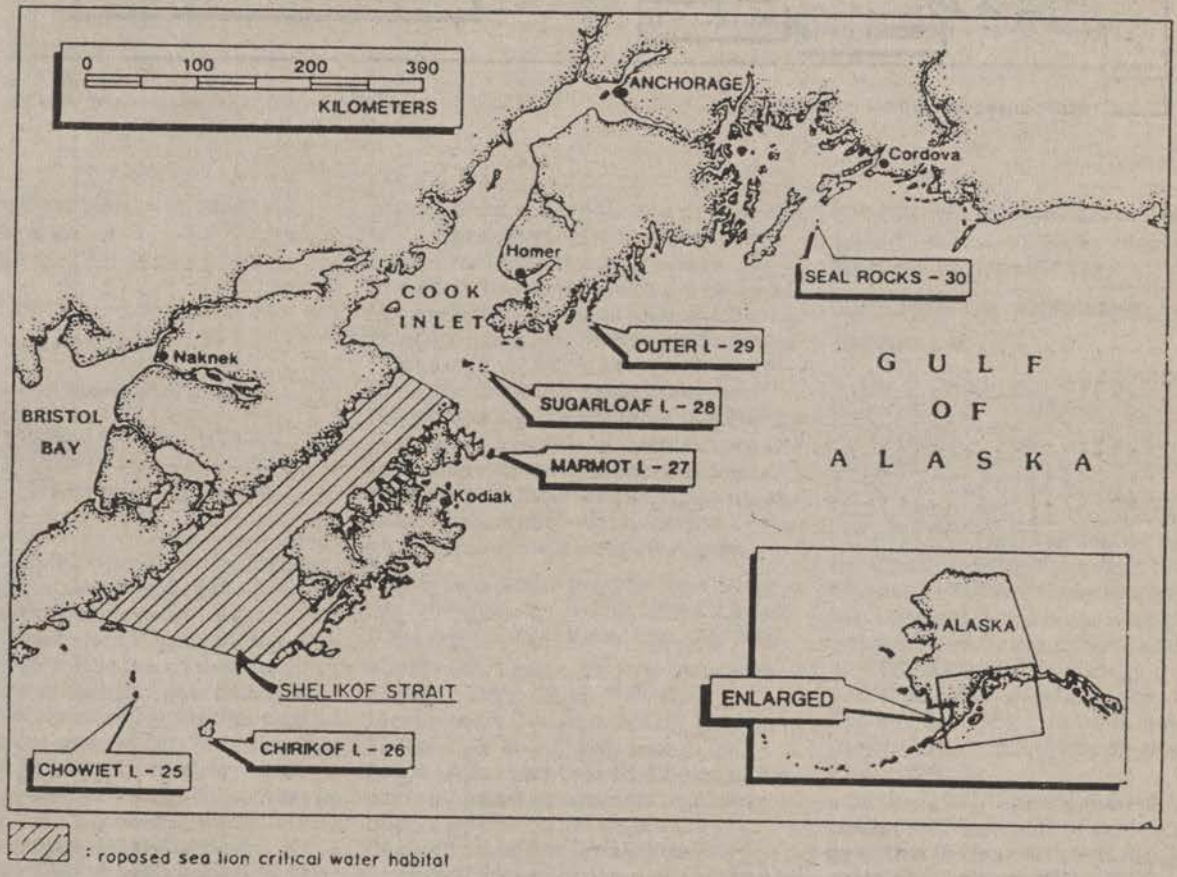


Figure 2 to Part 226: Proposed Steller sea lion critical habitat in the vincinity of Bogoslof Island. Locations indicated are major Steller sea lion rookeries.

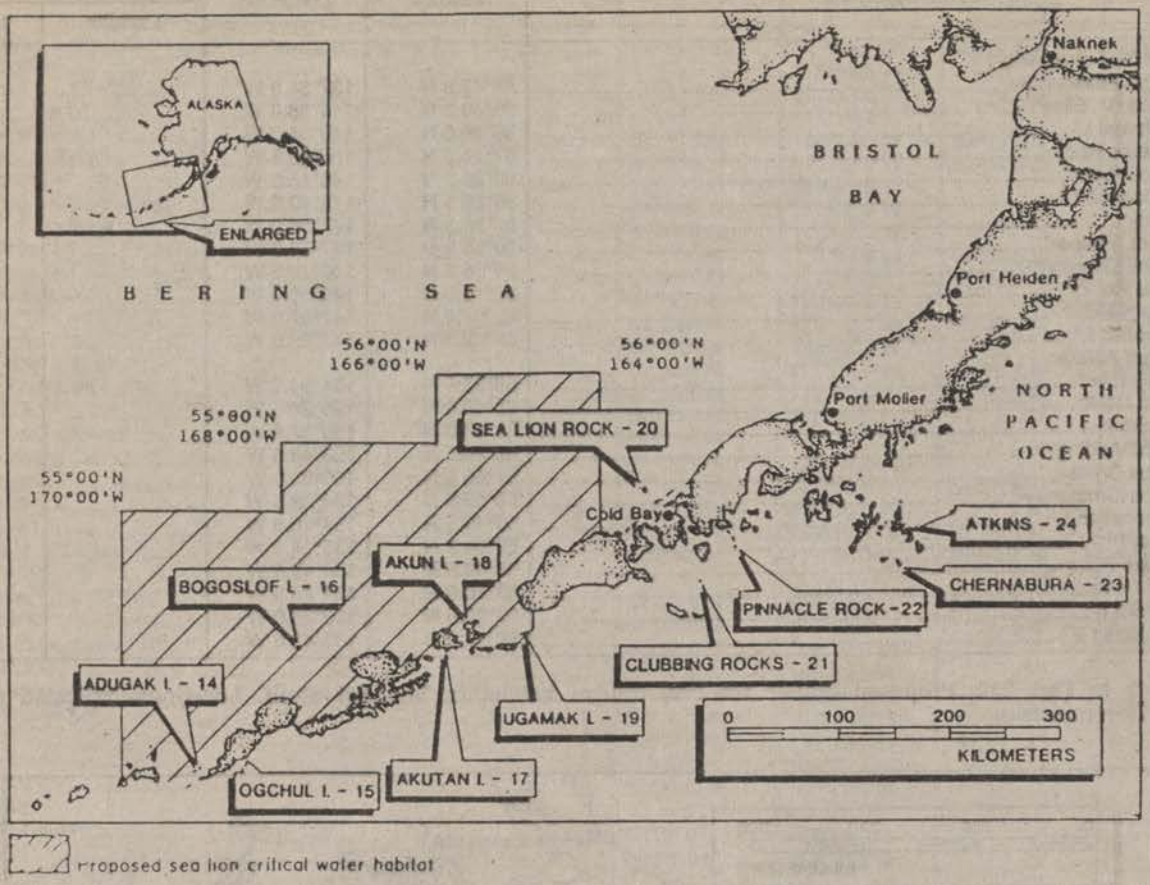
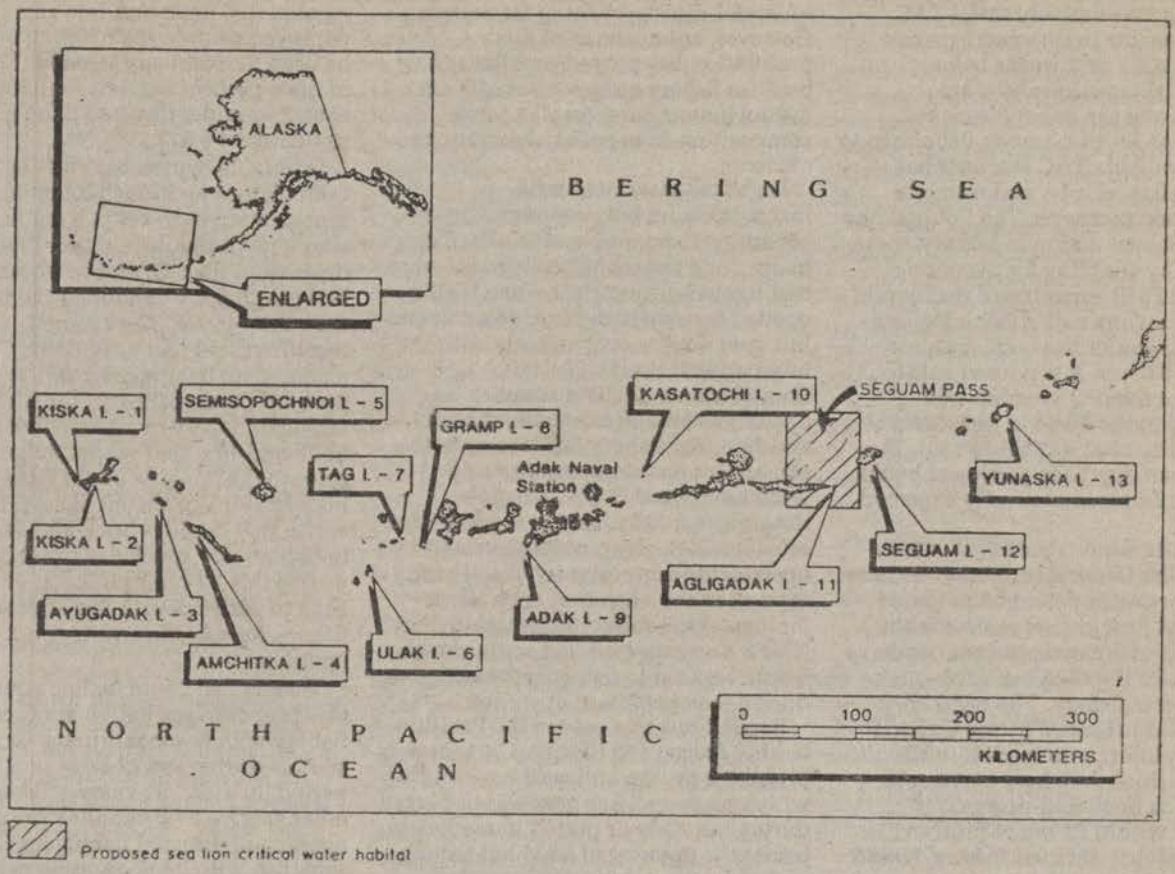


Figure 3 to Part 226: Proposed Steller sea lion critical habitat in vicinity of Sequam Pass. Locations indicated are major Steller sea lion rookeries.



[FR Doc. 93-7512 Filed 3-31-93; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921185-3022]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes two changes to the regulations governing the opening of the sablefish hook-and-line gear fishery in the Gulf of Alaska (GOA). The first would redefine the start of the GOA sablefish hook-and-line gear fishery to prohibit operators of vessels that deploy hook-and-line gear within 72 hours of the opening from participating in the directed sablefish fishery. This action is necessary to clarify NMFS' intent with respect to the opening of directed fishing for sablefish with hook-and-line gear, and reduce both gear conflicts and preemptions of the fishing grounds. The second proposed action would set the annual mid-May opening date as the mid-May date upon which the tide with the smallest tidal range occurs—the least damaging tidal range for hook-and-line gear. This action is necessary to provide safer fishing conditions and reduce economic costs resulting from gear loss. The intent of these actions is to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, April 28, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed by the Secretary of Commerce (Secretary) in accordance with the Fishery Management Plan for Groundfish of the GOA (FMP). The FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations codified at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

In the GOA, separate total allowable catch (TAC) amounts of sablefish are specified for four different regulatory areas and districts. These TAC amounts are further allocated between hook-and-

line and trawl gear. During 1992, 985 vessels participated in the GOA sablefish hook-and-line gear fishery. This large number of fishing vessels competing for relatively small TAC amounts results in directed fisheries that only last 1 or 2 weeks before directed fishing allowances are harvested and the fishery is closed. Intense competition among fishermen to harvest available TAC amounts has created safety, equity, and resource management concerns. The Council has taken long-term action to address these concerns by adopting for Secretarial review an FMP amendment that would authorize an individual fishing quota (IFQ) program for the hook-and-line sablefish fishery. A proposed rule to implement the IFQ program was published in the **Federal Register** on December 3, 1992, (57 FR 57130). The IFQ program has been approved by the Secretary. Implementation is expected in 1994.

During its September 22–27, 1992, meeting, the Council recommended that a regulatory amendment be prepared that would provide immediate relief from some of the management concerns that exist for the GOA sablefish hook-and-line gear fishery. The regulatory amendment proposed by the Council would prohibit participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery. NMFS also proposes a regulatory amendment that would set the annual date for the mid-May season opening of the GOA sablefish hook-and-line gear fishery as the date upon which the tide with the smallest tidal range occurs.

Reasons for, and a description of each of the proposed measures follow:

Redefine the Opening of the Gulf of Alaska Sablefish Hook-and-Line Gear Fishery

Under this proposed regulatory measure, no vessel from which hook-and-line gear was used to fish for any species of fish in the GOA during the 72-hour period immediately before an opening to directed fishing for sablefish with hook-and-line gear may be used to participate in that opening of the sablefish fishery. This measure is proposed because existing regulations do not prohibit the deployment of hook-and-line gear prior to an opening for directed fishing for sablefish with this gear type. Some fishermen take advantage of this opportunity by deploying hook-and-line gear prior to the start of the sablefish fishery with the intent to fish for sablefish. These fishermen then retrieve the resulting directed sablefish catch after the directed fishery has opened. Gear deployment before the opening, under these circumstances, constitutes unlawful directed fishing for sablefish. However, enforcement of this prohibition has proved problematic because fishery enforcement officers cannot determine a vessel's catch composition from aerial observations alone.

Problems associated with inconsistencies between regulations governing the opening of the Pacific halibut and the sablefish fisheries were highlighted during 1992 when NMFS opened the sablefish directed hook-and-line gear fishery concurrently with the International Pacific Halibut Commission's (IPHC's) summer openings of the Pacific halibut hook-and-line gear fishery. The intent of the concurrent openings was to avoid wasteful discard of the sablefish resource and fully harvest the specified sablefish TACs by providing vessel operators the opportunity to retain any amount of sablefish that were taken incidental to the Pacific halibut fishery. NMFS also expected that some vessels would be used to fish only for sablefish during the concurrent openings.

Regulations that govern the Pacific halibut fishery (50 CFR part 301) clearly prohibit a person on board a vessel from which hook-and-line gear was deployed during the 72-hour period immediately before the opening of a halibut fishing period from catching or possessing halibut during that halibut fishing period. The Pacific halibut fishery regulations also provide that no vessel from which hook-and-line gear was deployed during the 72-hour period immediately preceding an opening of a halibut fishing period may be used to catch or possess halibut during that halibut fishing period (50 CFR 301.16 (g) and (h)). However, regulations governing the hook-and-line sablefish fishery do not similarly prohibit deployment of hook-and-line fishing gear prior to the opening of the sablefish fishery. As a result, concurrent openings of the Pacific halibut and sablefish fisheries during 1992 created additional confusion in the interpretation of current regulations and resulted, in some instances, in the deployment of hook-and-line gear in advance of the opening of these directed fisheries.

Reports of vessels deploying gear in advance of an opening of the directed sablefish hook-and-line gear fishery were brought to the Council's attention. A clarification of existing regulations was requested at the June 23–28, 1992, Council meeting. NMFS issued a news release on June 26, 1992, stating that hook-and-line gear used in the directed fishery for GOA sablefish may not be deployed until 12 noon of the opening date of that fishery. Under existing regulations, hook-and-line gear that is deployed prior to the opening may not be used to retain any sablefish in excess of the 4 percent bycatch limitation specified under directed fishing standards at § 672.20(g)(4).

During its September meeting, the Council was petitioned by industry representatives to adopt a regulatory amendment that would redefine the opening of the GOA sablefish hook-and-line gear fishery to address the problems described above. The Council recommended that a regulatory amendment be prepared that would prohibit participation in the directed sablefish fishery by vessels that deploy hook-and-line gear within 72 hours prior to the opening of the sablefish hook-and-line directed fishery. No vessel that deploys hook-and-line gear to fish for any species in the GOA during this 72-hour period could be used to participate in the directed fishery for sablefish during that opening.

Vessels that could be impacted under this proposed regulation are those fishing with hook-and-line gear for other species during the 72-hour prohibition period. In 1992, 31 vessels fished for other species of groundfish prior to the opening of directed fishing for GOA sablefish with hook-and-line gear. NMFS specifically requests comments on the potential impact of the proposed action on vessels fishing for other species during the 72-hour period prior to an opening for directed fishing for sablefish with hook-and-line gear. If approved by the Secretary, this regulatory amendment could be effective by May 15, 1993, the current opening date of the GOA sablefish hook-and-line gear fishery.

This action will reduce gear conflicts and the preemption of fishing grounds while providing safer fishing conditions. Without a regulation prohibiting the deployment of gear in advance of the sablefish hook-and-line fishery, vessels could deploy gear prior to the opening. This could cause ground preemptions and gear conflicts because hook-and-line gear can span several miles and gear set in advance of the opening would not be readily visible. Safety is compromised when gear becomes tangled due to tides or the union of two sets of gear. When gear is tangled, tension and torque can cause the line to part which compromises the safety of the fishermen on board while causing economic losses.

Regulatory Framework for Establishing the Season Opening Date

Industry representatives have petitioned NMFS for regulations establishing a regulatory framework for the annual determination of the season opening date of the directed sablefish hook-and-line gear fishery in the GOA. Regulations at 50 CFR 672.23 authorize directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the GOA from May 15 through December 31, or until closed by inseason action, whichever occurs earlier. In contrast, the IPHC annually selects the opening dates of the Pacific halibut fishery after considering the variation in tides. The GOA has semidiurnal tides, which have large ranges. For example, on May 15, 1992, the sablefish hook-and-line gear fishery commenced on a tide of maximum range, which resulted in gear losses and related economic costs. NMFS's fixed opening date does not take into account tidal variability and causes gear losses and economic costs when spring tides occur.

NMFS proposes a regulatory amendment that would set the mid-May opening date for the sablefish hook-and-line gear fishery as the date each year upon which the tide has the smallest tidal range. Tides can be measured by calculating the change in feet between consecutive high and low waters, a measurement commonly called the tidal "range." Tides with a large range have been known to cause loss of fishing gear, resulting in "ghost" fishing and economic loss to fishermen. Under the proposed regulatory framework, NMFS would annually specify the sablefish opening date as the day between May 9th and May 22nd upon which the tide with the smallest tidal range occurs. This opening date would be determined from the tide schedules in the publication Tide Tables, published annually by the Department of Commerce, NOAA, and would be published annually in the Federal Register by January 1, or as soon as practicable thereafter, for the new fishing year.

NMFS preliminarily concurs with the proposed actions. Implementation of the proposed measures would provide economic benefits to vessels participating in the sablefish hook-and-line gear fishery as gear conflicts, preemption of fishing grounds, and gear losses due to variable tides would be minimized.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

NMFS prepared an EA for this rule that discusses the impact on the environment as a result of this rule. The public may obtain a copy (see **ADDRESSES**).

NMFS prepared an IRFA that concludes that this proposed rule, if adopted, would have significant effects on small entities. This action is intended to prevent gear conflicts, prevent fishing ground preemptions and diminish economic losses. Based on data from the 1992 sablefish hook-and-line gear fishery in the GOA, 985 vessels could benefit by this action. If 10 percent of the vessels participating in this fishery each deployed one set of gear in advance of the opening this could result in over 130 metric tons of sablefish being taken prior to the opening date. The cost of 10 percent of the vessels deploying gear in advance of the opening could be approximately $334,000 or a potential loss of approximately $370 to each vessel that does not deploy gear in advance of the fishery. This situation creates inequities among those who fish in accordance with regulations and those who do not. In addition, economic losses due to a fixed commencement date of the May season opening date could cause net losses when varying tides occur causing gear conflicts and fish loss to all participants. A copy of this analysis is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "'major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by NMFS. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

Pursuant to the requirements of the Endangered Species Act (ESA), NMFS has determined that the fisheries as managed by 50 CFR part 672, as would be revised by this proposed rule, will not affect any endangered or threatened species under the ESA in ways not analyzed by previous biological opinions and informal consultations.

NMFS has determined that this rule would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under Section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements

Dated: March 26, 1993.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, paragraph (k) is added to read as follows.

§ 672.7 Prohibitions.

* * * * *

(k) Engage in directed fishing for sablefish with hook-and-line gear from a vessel that was used to deploy hook-and-line gear within 72 hours prior to the opening of the sablefish hook-and-line directed fishery.

3. In § 672.23, paragraph (c) is revised to read as follows:

§ 672.23 Seasons.

* * * * *

(c) The opening date for the directed fishing season for sablefish with hook-and-line gear in the Gulf of Alaska will be the calendar day from May 9 through May 22 upon which the tide with the smallest tidal range occurs. For purposes of this paragraph, tidal range means the change, measured in feet and inches, between consecutive high and low waters. The directed fishery will remain open through December 31 subject to other provisions of this part. The opening date will be determined from the tide schedules in the annual publication Tide Tables published by

the Department of Commerce, NOAA. By January 1, or as soon as practicable thereafter, of each year, NMFS will publish a notice in the **Federal Register** announcing this date for the new fishing year.

* * * * *

[FR Doc. 93–7576 Filed 3–29–93; 2:40 pm]
BILLING CODE 3510–22–M

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50 CFR Parts 672 and 675

[Docket No. 930–232–3032]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes four regulatory amendments applicable to the groundfish fisheries off Alaska. These amendments would revise the existing definition of a pelagic trawl; implement a performance standard for trawls, which would be in effect whenever directed fishing for groundfish with non-pelagic trawls is prohibited; implement a definition of a non-pelagic trawl; and revise a directed fishing standard associated with trawl gear when directed fishing with non-pelagic trawls is prohibited. These measures are necessary to address management concerns in the groundfish fisheries. They are intended to promote the goals and objectives of the North Pacific Fishery Management Council with respect to groundfish management off Alaska.

DATES: Comments must be received by April 30, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and Bering Sea and Aleutian Islands Area is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are implemented at 50 CFR part 620.

At times, amendments to regulations at 50 CFR parts 672 and 675 are necessary for conservation and management of the groundfish fisheries. Regulatory amendments proposed by this action would implement the following four changes to regulations: (1) The existing definition of a pelagic trawl in §§ 672.2 and 675.2 would be revised; (2) §§ 672.7 and 675.7 would be revised to prohibit the catch of 20 or more crabs when fishing for groundfish with trawl gear whenever directed fishing for groundfish with non-pelagic trawls is prohibited; (3) §§ 672.2 and 675.2 would be amended by adding a definition of a non-pelagic trawl; and (4) §§ 672.20(g)(3) and 675.20(h)(1) would be revised such that the directed fishing standard would apply only when fishing by vessels using non-pelagic trawl gear is prohibited.

A description of, and reasons for, each of these measures follows.

Revision of the Pelagic Trawl Definition

NMFS has implemented several bycatch management measures in the Gulf of Alaska and in the Bering Sea and Aleutian Islands groundfish trawl fisheries to minimize the catch of halibut and crab, which are designated as prohibited species in the groundfish fisheries. One measure prohibits the use of non-pelagic trawls while allowing the use of pelagic trawls when certain prohibited species catch (PSC) allowances of halibut or crab have been caught as bycatch. This measure depends on the differences in the configurations of pelagic trawls and non-pelagic trawls.

The existing definition of a pelagic trawl in §§ 672.2 and 675.2 initially was implemented through an emergency rule (55 FR 33715, August 17, 1990) under Magnuson Act section 305(c) and then as a final regulation (56 FR 2700, January 24, 1991) as a management tool to allow directed fishing for pollock by vessels using pelagic trawl gear. Reasons for the pelagic trawl definition are contained in the EA/RIR reviews and the regulatory preambles for both rulemakings. These reasons are summarized here. The proposed rule published at 55 FR 38347, September 18, 1990, stated that a former definition of a pelagic trawl contained a measure that was intended to prohibit parts of the pelagic trawl from contacting the seabed. This measure was intended to minimize bycatches of halibut and crab. NMFS provided testimony to the Council that such a prohibition could not be enforced. In meetings with industry representatives, NMFS sought to determine how a pelagic trawl was constructed to determine if the pelagic trawl definition could be improved for enforcement purposes. Fishing industry representatives emphasized that pelagic trawls were constructed to reduce drag during fishing operations by using large mesh openings or parallel lines behind the trawl opening. Mesh openings of at least one meter (3.3 feet) or parallel lines that are at least one meter apart accomplish the objective of reducing drag, but also result in reduced bycatch of halibut and crab. These animals, upon passing over the foot rope and into the trawl, are believed to escape through the large meshes or between the parallel lines. The large mesh sizes or parallel lines in back of the fishing line provide escape panels for halibut and crab in case the pelagic trawl contacts or comes near the seabed, resulting in reduced bycatches of halibut and crab. Historical joint venture data provided evidence that halibut and crab bycatches were minimal when using trawls of this type, because these animals were able to escape the pelagic trawl through the large meshes upon passing over the foot rope. Requiring 12-inch spacing around the net circumference instead of just the belly panel prevented a fisherman from circumventing the purpose of the rule by fishing a net upside down. When bycatch PSC allowances of halibut or crab were reached, closure notices stipulated that further trawling with trawls other than pelagic trawls were prohibited. Industry sources indicated to NMFS when the rule was being developed that most pelagic trawls purchased within the last ten years for use in the BSAI conformed to the definition. Trawl fishermen have been using these trawls for mid-water trawling, because the larger meshes reduce drag for the towing vessel.

NMFS fishery information continues to demonstrate that very small bycatches of halibut and crab occur when pelagic trawls are used, compared to much higher bycatch proportions when non-pelagic trawls are used. The existing definition of a pelagic trawl in

§§ 672.2 and 675.2 continues to depict a pelagic trawl configuration. The definition prohibits the use of discs, bobbins, rollers, or other chafe protection gear attached to the foot rope. It also requires very large mesh, or parallel ropes, aft of the fishing line for a length of several meshes.

During the 1991 and 1992 fisheries, some fishermen were able to defeat the purpose of the pelagic trawl definition by reconfiguring a trawl in such a way that it met the definition of a pelagic trawl, but functioned as a non-pelagic trawl. Other fishermen apparently were able to fish a pelagic trawl for certain groundfish species (e.g., large-sized pollock), which are found close to the sea bed, and which normally would be caught with non-pelagic trawls. As a result, bycatches of halibut and crab were higher than anticipated even when directed fishing with non-pelagic trawl gear was prohibited.

Associated with the pelagic trawl definition is the definition of a fishing line, which reads: "Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached".

Fishermen have been able to defeat this definition merely by attaching parallel lines to the front of an existing non-pelagic trawl, resulting in a configuration that meets the definition of a pelagic trawl with parallel lines. Once a line is no longer in front, it is no longer a fishing line by definition.

Also, associated with the fishing line is the foot rope, which is defined as follows: "Footrope means chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line."

Again, once a rope is further back in the belly of a reconfigured non-pelagic trawl, it is no longer a foot rope by definition. When these reconfigured trawls are deployed in close proximity to the sea bed to trawl for groundfish species that normally are caught with non-pelagic trawls, high bycatch rates of Pacific halibut and crab have resulted, defeating the purpose of regulations intended to minimize bycatches of halibut and crab.

The Council considered this issue at the April 1992 meeting. It reviewed recommendations from industry representatives for revising the current pelagic trawl definition. The industry representatives sought to describe a pelagic trawl in such a way that fishermen would not be able to defeat the definition by simply re-configuring a trawl to meet the pelagic trawl definition and then fish it as a non-pelagic trawl. The underlying objective is to reduce halibut and trawl bycatches by discouraging or preventing trawl operations on the sea bed when halibut and crab PSC allowances have been reached. The "trawl performance standard," as described below, is a means to accomplish this objective. NMFS believes such a measure would not be effective unless impartial persons are on board to observe the catches. A physical definition of a pelagic trawl is still necessary to enforce closures to non-pelagic trawls.

Based on industry recommendations, the Council adopted a revision to the pelagic trawl definition. Salient parts of this definition prohibit trawl parts and configurations that typically are not found on a pelagic trawl. NMFS proposes the definition to facilitate enforcement and prosecution of violations. Should a trawl fail any part of the definition, the vessel operator is in violation of the regulations. The following explains the purpose of each part of the definition.

A pelagic trawl must not have discs, bobbins, or rollers, and must not have chafe protection gear attached to the foot rope or fishing line. These parts would be prohibited, because they typically are found only on non-pelagic trawls.

A pelagic trawl, other than a rope trawl, must not have mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and must not have stretched mesh sizes of less than 60 inches (152.4 cm) extending aft from all points on the fishing line, head rope, and breast lines past the fishing circle for a distance equal to or greater than one-half the vessel's length overall.

A pelagic trawl configured as a rope trawl (i.e., having a series of parallel ropes in the front end of the trawl) must not have parallel lines spaced closer than 64 inches (162.6 cm), starting at all points on the fishing line, head rope, and breast lines and extending aft of the fishing circle. Furthermore, meshes aft of the parallel ropes must meet the same minimum mesh size requirement as required by the above paragraph (i.e., no less than 60 inches (152.4 cm) for a distance of one-half the vessel's length overall).

Aft of the minimum 60-inch (152.4-cm) mesh size described above, a pelagic trawl must not have stretched mesh sizes less than 15 inches (38.1 cm) for a distance equal to or greater than one-half the vessel's length overall. A pelagic trawl must not have any configuration intended to reduce the stretched mesh sizes described above.

NMFS understands that all pelagic trawls used in the Alaska groundfish fisheries already meet these large mesh/parallel line spacing requirements. Historical and current NMFS catch data show that pelagic trawls with large meshes and widely spaced parallel lines result in low bycatches of crab and halibut. Maintaining the minimum size requirement for these large meshes and widely spaced parallel lines is a major part of the pelagic trawl definition.

A pelagic trawl must not have flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sonde device. NMFS understands that the doors (otter boards) used when deploying pelagic trawls keep the mouth of the trawl open and that floats are not necessary for this purpose. However, net-sonde devices normally used with all trawls must have some flotation capable of maintaining the upward position of the device to allow it to measure bottom depths correctly. The maximum weights of such devices indicate that as much as 200 pounds (90.7 kg) of flotation may be required for net-sonde devices to perform as intended. At its September 1992 meeting, the Council recommended that the phrase "* * * and/or lifting devices (e.g., kites or floats)" be deleted from the proposed definition. Some industry representatives have requested that NMFS allow kites or floats to allow operation of large trawls in shallow water. When large trawls operate in shallow water, fishermen may not be able to use midwater trawl doors to keep the trawl mouth open, thereby necessitating the use of lifting devices (e.g., kites or floats). NMFS proposes to prohibit kites or floats other than 200 pounds (90.7 kg) of flotation to accommodate a net-sonde, but specifically requests comments on this issue.

A pelagic trawl must not have more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle. The purpose of this description is to prohibit fishermen from adding many weighted lines and thus causing the trawl to be suitable for fishing for groundfish species normally caught with non-pelagic trawls. NMFS is considering defining a "weighted line," and requests information from the public about materials and means used to weight lines for use with trawl gear.

A pelagic trawl must not have metallic components except for connectors (e.g., hammerlocks or swivels) and net-sonde devices aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure. The purpose of this description is to prevent fishermen from attaching parallel lines to a non-pelagic

trawl, which would result in a non-pelagic trawl's fishing line, which is a metal component made of heavy chain or wire rope, being further back in the belly of a trawl, thereby allowing fishermen to defeat the definition by simply reconfiguring a non-pelagic trawl to meet the pelagic trawl definition and then fish it as a non-pelagic trawl. This was the practice early in 1992 that resulted in the Council's decision to revise the pelagic trawl definition.

A pelagic trawl may have small mesh within 32 feet (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sonde device). Although an allowance for small mesh is inconsistent with the large mesh descriptions of the definition, the industry contends that secure attachment of instrumentation requires small meshes.

Finally, a pelagic trawl may have weights on the wing tips. NMFS understands that all trawls, including pelagic trawls, must have weights on the wing tips for proper deployment. This description in the definition is not necessary, but NMFS recognizes that the Council included it to underscore the necessity of weights on the wing tips.

The Council's recommended revised pelagic trawl definition addresses the weaknesses identified with the existing definition. NMFS concurs with the Council's recommendation and proposes to revise the pelagic trawl definition. For purposes of clarity, NMFS has modified the wording of the definition in this rule from the exact language adopted by the Council. These modifications are intended to conform to the Council's intent.

Trawl Performance Standard

Fishermen who use pelagic trawls in midwater fisheries catch very small amounts of bottom dwelling (benthic) life forms other than free swimming fish. Fishermen who use non-pelagic trawls, or who fish with pelagic trawls for pollock on or near the sea bed, catch large amounts of benthic life forms. NMFS observer reports show these life forms are usually Tanner crabs. Therefore, the presence of crabs in trawl catches is assumed to be the result of fishermen deploying pelagic trawls on the sea bed.

When pelagic trawls are used in midwater pollock fisheries, catches of crabs occur in very small numbers. In 1991, for example, 11,344 of 14,624 observed hauls (78 percent) on vessels using pelagic trawl gear caught zero crabs. These operations, which caught no crabs, caught 642,111 metric tons (mt) of groundfish (see Appendix 2 of the EA/RIR/IRFA prepared for this action). These results show that large groundfish catches can occur without catching Tanner crabs.

Fishermen might avoid catching Tanner crabs simply by adjusting fishing practices to avoid fishing on the sea bed. If so, the intent of the Council's revised pelagic trawl definition would be promoted. At its December 8–13, 1992, meeting, the Council reviewed NMFS data about numbers of crabs that are caught by vessels using pelagic trawls to determine a number that might represent a reasonable performance standard to accompany a pelagic trawl definition.

NMFS analyzed numbers of crabs in 1991 trawl catches that were attributed to pelagic trawls. In doing so, NMFS first examined bycatch rates of halibut that were caught during 1991 by vessels using trawl gear. These rates, shown in Appendix 2 of the EA/RIR/IRFA, show a significant increase when the bycatch rate (numbers of crab/mt of groundfish) changes from 0.0012 to 0.0024. This represents a 100-percent increase. The 0.0012 bycatch rate equates to the 0.1 percent value used in the Vessel Incentive Program. Under the program, vessel operators are subject to a violation if the ratio of halibut to groundfish catches by a vessel participating in the midwater trawl fishery exceeds 0.1 percent as contained in procedures in § 675.26(d)(2)(v)(C). A habibut bycatch rate greater than 0.1 percent is a violation of the Vessel Incentive Program.

NMFS analyzed the number of crabs associated with this proportion. The 1991 observer data show that when the halibut bycatch rate doubled from 0.0012 to 0.0024, the number of crabs increased to 20 animals or more per groundfish haul. Therefore, NMFS considers the presence of 20 crabs or more in a haul or on board a vessel to have resulted from a vessel operating a trawl on the sea bed.

After reviewing the NMFS bycatch data, the Council agreed that a catch of fewer than 20 crabs might be expected when a pelagic trawl is deployed correctly, but that a catch of 20 or more crabs likely was the result of operating a trawl on the sea bed. Therefore, the Council recommended defining as a violation the possession of 20 or more crabs when caught by trawl gear when directed fishing with non-pelagic trawl gear is prohibited.

Further, the Council recommended that the actual number of crabs be frameworked in such a way that it could be changed from the present number of 20 crabs to some other number if information warranted the change. The purpose of the Council's recommendation was to avoid the lengthy rulemaking process when regulations are amended.

NMFS concurs with the Council's recommendation to prohibit the possession of 20 or more crabs by the operator of a vessel using trawl gear when directed fishing with non-pelagic trawls is prohibited. With respect to proposing a measure to framework the actual number of crabs, NMFS notes that the purpose of the proposed performance standard of 20 crabs is to encourage fishermen to deploy their pelagic trawl gear with the objective of catching zero crabs. A zero crab bycatch will be associated with a reduced halibut bycatch as well. Therefore, NMFS is not proposing to framework this measure, but encourages the Council to review the performance standard at any time and recommend changes as necessary. NMFS intends to use the best available information with respect to this measure and make changes as necessary for purposes of conservation and management of the fishery.

Definition of a Non-Pelagic Trawl

A non-pelagic trawl is not defined in the existing regulations, even though "non-pelagic trawl" is referenced in regulatory text in 50 CFR parts 672 and 675. NMFS proposes to amend §§ 672.2 and 675.2 to define a non-pelagic trawl to mean a trawl other than a pelagic trawl.

Directed Fishing Closures

Under current regulations, directed fishing for a groundfish target fishery category is prohibited under § 672.20(c)(2) or § 675.20(a)(8), because a directed fishery allowance has been reached. Fishermen who use pelagic trawl gear are prohibited from retaining aggregate amounts of groundfish species for which a directed fishing closure applies in amounts equal to or greater than 7 percent. In contrast, fishermen who use non-pelagic trawl gear are prohibited from retaining groundfish in amounts equal to or greater than 20 percent. NMFS did not intend to constrain pelagic fishermen in this manner.

Therefore, NMFS proposes to amend the regulations establishing the 7-percent standard (at §§ 672.20(g) and 675.20(h)(1)) so that the 7-percent standard will not apply during directed fishing closures under §§ 672.20(c)(2) or 675.20(a)(8). Under the proposed regulations, the 7-percent standard would apply only when trawling for goundfish other than pollock with pelagic gear has been prohibited (under

§§ 672.20(f)(1) and 675.21(c)) because a halibut or crab limit is about to be reached. Furthermore, the current standard can be used only if the fish on board were harvested by "pelagic trawl," which may be difficult to prove. To ease enforcement, the revised standard deletes the word "pelagic", so the standard is applied by counting all retained groundfish harvested by trawl gear during a trip.

Other Changes

NMFS proposes to remove figures 2 and 3 to part 672 and figures 4 and 5 in part 675. These figures do not accurately depict a pelagic trawl and serve no useful purpose.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

The Alaska Region, NMFS, prepared an EA for this rule that describes the impact on the human environment that would occur as a result of its implementation. A copy of the EA may be obtained (see **ADDRESSES**).

The Assistant Administrator initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS concludes that none of the proposed measures in this rule would cause impacts considered significant for purposes of the E.O.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis as part of the EA/RIR/IRFA for this proposed rule that describes its economic impact on small entities, if adopted. A summary of the IRFA follows:

(1) The revision to the pelagic trawl definition is superior to the current definition, because fishermen will not easily be able to reconfigure pelagic trawls for purposes of fishing in close proximity to the sea bed for groundfish species normally caught with non-pelagic trawls;

(2) The performance standard prohibiting the catch of a crab in a trawl when non-pelagic trawl gear is prohibited is superior to the status quo, because it minimizes the importance of the physical pelagic trawl definition, and will discourage fishermen from fishing a pelagic trawl as they would a non-pelagic trawl;

(3) The newly proposed definition of a non-pelagic trawl is superior to the status quo, because it is needed to improve the effectiveness of regulations; and

(4) The application of the directed fishing standard of 7 percent is superior to the status quo, because it will apply only to situations when the use of non-pelagic trawls has been prohibited, promoting the intent of this particular directed fishing standard.

NMFS has determined that fishing conducted under the FMPs and this rule will not affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 26, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, definitions of "fishing circle", "non-pelagic trawl", "stretched mesh size", and "wing tip" are added in alphabetical order and the definition of "pelagic trawl" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

* * * * *

Non-pelagic trawl means a trawl other than a pelagic trawl. * * *

Pelagic trawl means a trawl that:

(1) Has no discs, bobbins, or rollers;

(2) Has no chafe protection gear attached to the foot rope or fishing line;

(3) Except for the small mesh allowed under paragraph (9) of this definition:

(i) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one-half the vessel's length overall; or

(ii) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one-half the vessel's length overall;

(4) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (3) of this definition for a distance equal to or greater than one-half the vessel's length overall;

(5) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (3) and (4) of this definition;

(6) Has no flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sonde device;

(7) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and fishing circle;

(8) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sonde device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(9) May have small mesh within 32 feet (9.8 m) of the center of the head

rope as needed for attaching instrumentation (e.g., net-sonde device); and

(10) May have weights on the wing tips.

* * * * *

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

* * * * *

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

3. In § 672.7, paragraph (k) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(k) Have on board, at any particular time, 20 or more of any crab species caught with trawl gear when directed fishing for groundfish with non-pelagic trawl gear is prohibited under § 672.20(f)(1).

4. In § 672.20, paragraph (g)(3) is revised to read as follows:

§ 672.20 General limitations.

* * * * *

(g) * * *

(3) *Using trawl gear when directed fishing with non-pelagic trawl gear is prohibited.* The operator of a vessel is engaged in directed fishing for groundfish species or species groups in violation of a notice issued under paragraph (f)(1) of this section, if the operator retains at any time during a trip an aggregate amount of these groundfish species or species groups caught with trawl gear equal to or greater than 7 percent of the amount of other fish or fish products, in round-weight equivalents, retained on the vessel at the same time during the same trip.

* * * * *

5. In § 672.24, paragraphs (d)(1) introductory text and (d)(2) introductory text are revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(d) * * *

(1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

(2) From February 15 to June 15, no person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

6. Figures 2 and 3 are removed from part 672 and Figure 4 is redesignated as Figure 2 to the part.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

7. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

8. In § 675.2, definitions of "fishing circle", "non-pelagic trawl", "stretched mesh size", and "wing tip" are added in alphabetical order, and the definition of "pelagic trawl" is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

* * * * *

Non-pelagic trawl means a trawl other than a pelagic trawl.

* * * * *

Pelagic trawl means a pelagic trawl as defined in § 672.2 of this chapter.

* * * * *

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

* * * * *

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

9. In § 675.7, paragraph (m) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(m) Catch 20 or more of any crab species at any particular time with trawl gear when directed fishing for groundfish with non-pelagic trawl gear is prohibited under §§ 675.20(h)(1) or 675.24(c)(2).

10. In § 675.20, paragraph (h)(1) is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(1) *Using trawl gear when directed fishing with non-pelagic trawl gear is prohibited.* The operator of a vessel is engaged in directed fishing for groundfish species or species groups in violation of a notice issued under § 675.21(c)of this part, if the operator retains at any time during a trip an aggregate amount of these groundfish species or species groups caught with trawl gear equal to or greater than 7 percent of the amount of other fish or fish products, in round-weight equivalents, retained on the vessel at the same time during the same trip.

* * * * *

11. Figures 4 and 5 are removed from part 675.

[FR Doc. 93–7509 Filed 3–31–93; 8:45 am]

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50 CFR Part 675

[Docket No. 930350–3050]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to delay the opening of the second (non-roe) directed fishing season for pollock in the Bering Sea and Aleutian Islands Area (BSAI) from June 1 to August 15 of each fishing year. This action is necessary to achieve increased revenues from the harvest of BSAI pollock during the non-roe season. The proposed season delay also would provide participants in the pollock fishery increased opportunities to fish in other groundfish fisheries and to develop salmon processing capabilities during summer months. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time (A.l.t.), April 16, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, (907) 586–7228.